DOCUMENT RESUME

ED 107 399 95 RC 008 527

TITLE	So That All Indian Children Will Have Equal Educational Opportunity, Volume 2. USOE/BIA Study of the Impact of Federal Funds on Local Education Agencies Enrolling Indian Children.
INSTITUTION	ACKCO, Inc., Boulder, Colo.
SPONS AGENCY	Bureau of Indian Affairs (Dept. of Interior), Washington, D.C.; Office of Education (DHEW), Washington, D.C.; Small Business Administration, Washington, D.C.
PUB DATE	Sep 74
NOTE	300p.
EDRS PRICE	MF-$0.76 HC-$14.59 PLUS POSTAGE
DESCRIPTORS	Administrative Agencies; Agency Role; *American Indians; Attitudes; *Educational Assessment; Educational Equality; *Educational Legislation; *Federal Programs; Financial Policy; Management; Parent School Relationship; Program Effectiveness; *Relevance (Education); Tables (Data)

ABSTRACT

Volume 2 of a 3-volume report presents the major findings and discussions of ACKCO, Inc.'s legislative review and empirical research of the Impact-Aid Program, Johnson-O'Malley (JOM) Program, Indian Education Act, and Elementary and Secondary Education Act Title I. The empirical findings, which form the basis for most of the conclusions and recommendations, are from the fiscal, management, and program studies. Among these findings are: (1) Indian children are not receiving an adequate share of Title I funds to meet their needs; (2) the JOM Act had not been used as extensively as it could and should be due to the BIA's interpretation of the Act; (3) a great difference existed in the money appropriated for BIA education and the money actually spent per pupil in BIA schools; and (4) existing methods of school financing have neither assured that Indian children receive an equalized per pupil expenditure nor that they are provided an adequate basic education program. Recommendations are also given for Titles I and IV, P.L. 874, JOM, and the SEA. Results of the surveys of parent advisory committees and of business community attitudes toward the educational program are also included. A discussion is presented on the degree of success of these programs in meeting the Indian educational needs. (NQ)

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USOE/BIA STUDY OF THE
IMPACT OF
FEDERAL FUNDS ON LOCAL
EDUCATION AGENCIES
ENROLLING
INDIAN CHILDREN

Prepared for:

U.S. OFFICE OF EDUCATION
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VOLUME 2

RC003527

EXPLANATORY NOTE TO VOLUME II

Because of its size the report has been printed in three volumes to permit easy handling. It is important to note however that it should be considered as a unified whole. Volume I includes a Summary of the report, the Introduction, a section on Issues in Education and a section on Indian Education: Past, Present and Future. Volume III includes Appendices in the areas of Legislation, Management, Fiscal, Program, Bureau of Indian-Affairs and Physical Characteristics in addition to Selected Bibliography and List of Abbreviations.

This volume (Volume II) presents the different study area reports. We must further note as we have in Section I: Introduction, and at the beginning of the different study reports, that each of the sub-studies in the areas of legislation, management, fiscal, program and elements of program success make their recommendations in the light of their particular viewpoint and that it is necessary to look at the Summary in Volume I to find the conclusions and recommendations based on an overall view of empirical and non-empirical findings.

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SECTION IV: FINDINGS AND DISCUSSION

A. LEGISLATIVE STUDY

Summary of Conclusions and Recommendations

Conclusions

1. The Johnson-O'Malley Act has not been used as extensively as it could and should be used due to the Bureau of Indian Affairs (BIA) interpretation of the Act. The 1936 Amendment (the Act was also amended in 1954 and 1957) provides that the Secretary of the Interior may contract with states or territories or political subdivisions thereof, or with any state university, college or school; or with any appropriate *state* or *private* corporation, agency or institution. The secretary is authorized, in his discretion, to consider education, medical attention, agricultural assistance and social welfare, including relief of distress. While in 1954 most of the health services were transferred to the Public Health Service (PHS), it nevertheless appears that only a slight amount of contract authority, as well as appropriation of funds, have been used for anything other than elementary and secondary education. (25 CFR 21.1 *et seq.*)

2. The language of the Johnson-O'Malley Amendment in 1936, by using the word "appropriate" immediately preceding state or private corporations, created ambiguity.

Therefore, Indian Tribal organizations and other Indian organizations have not executed contracts until the last few years.

3. The new Johnson-O'Malley regulations grant substantial control to Parent Advisory Committees (PACs) to oversee local educational agencies' functions and expenditure of funds. The attempts to exercise provisions of the new Johnson-O'Malley regulations, however, may be difficult since the legislative intent of the Act is so broad. However, Natonabah v. Board of Education of the Gallup-McKinley County School District, 355 F.Supp. 716, indicates how the courts might interpret Johnson-O'Malley regulations when a Local Educational Agency (LEA) is receiving both Johnson-O'Malley funds and P. L. 874 funds.

4. The new Johnson-O'Malley regulations vest substantial authority in PACs. Because of the extensive authority of PACs (ultimate veto power over LEA expenditure of Johnson-O'Malley funds), state governments may balk, if not explicitly refuse to contract for Johnson-O'Malley funds. The basic weakness of Johnson-O'Malley, as well as P. L. 874 and Title I, is the state's option to apply for federal funds available under this statute(s). If states refuse to apply for funds, can Indian children require a state to make application for Johnson-O'Malley funds? Brown v. Board of Education, 347 U.S. 483,493, states: "such an opportunity [education] where the State has undertaken to provide it, is a right which must be made available to all on equal terms." (emphasis added)

The Supreme Court, as it is currently constituted, has not interpreted this right to include equitable education finance. In San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973), the Court did not declare a Texas State school financing system unconstitutional as a violation of the Fourteenth Amendment equal protection clause. The Court held that, if the plaintiffs were to prevail, education must be defined as an explicit or implicit Constitutionally protected right. The Court further held that education, although important in today's society, is not a Constitutionally protected right. The issue of compelling states to apply for federal education funds has not been resolved. It is arguable that a state could be compelled to contract for Johnson-O'Malley funds for Indian children. Morton v. Ruiz, 94 S.Ct. 1055 (1974) and Morton v. Mancari, 94 S.Ct. 2474 (1974) both present favorable arguments when considering a federal law which applies to Indians living on or near Indian reservations. The argument is much weaker when applied to Indian children who do not live on or near reservations.

5. Public Law 874 funding is fundamentally inequitable to all students who live in land-poor districts. Since most Indian reservations are land-poor districts, Indian children residing on reservations and restricted land fall within this category. This is so even with current application of state equalization laws. As a matter of fact, this problem has been specifically recognized by Congress. P. L. 874 authorizes a built in "floor" or

minimum amount which an LEA can receive in the event it meets other eligibility requirements. Unfortunately, P. L. 874 funds are paid to LEAs based on the theory that they are "in lieu of taxes,"; thus, P. L. 874 does not address this problem.

6. It is important to point out that P. L. 874 funds, even where Indian children qualify for them, are nothing more than a payment to an LEA to be used for general operating expenditures.

7. Many Indian children do not qualify for P. L. 874 funds since they do not live on federal property, or do not have a parent who is employed on federal property (as defined by the Act). These excluded children live in small communities, rural or urban areas.

8. There has been a definite trend toward an increase of Indian children attending public (state) schools. However, many children fall within the class of Indian children who do not entitle the LEA to P. L. 874 funds. (See the preceding conclusion). This trend is so for a variety of reasons, not the least of which has been the BIA attitude and policy of locating as many Indian children within public schools as quickly as possible.

9. Public Law 874 is ambiguous and difficult to comprehend due, in part, to the number of amendments (26). The complexity, and in some cases ambiguity, has been further compounded by the amendment process. For example, a 1961 amendment to P. L. 874 could amend a specific section of the original 1950 Act. However, the amendment

(1961) refers back only to the most recent amendment of that particular section and not the original section of the original Act. Furthermore, in 1965, when Title I (ESEA) was enacted, P. L. 874 was amended to include new titles and new section numbers. Title I (ESEA) became Title II of P. L. 874. P. L. 874 became Title I of P. L. 874. In 1972, Title IV Part A became Title III to P. L. 874.

10. While Title I (ESEA) does not appear to be as confusing to read as P. L. 874, nevertheless, because it was incorporated into P. L. 874 and since there have been five amendments, the complexity of Title I is becoming similar to that of P. L. 874.

11. The regulations for P. L. 874, as well as can be ascertained, do not deviate from the original intent of P. L. 874 (i.e., to provide payments in lieu of taxes as a result of certain federal activities in the various states and territories).

12. Title I (ESEA) legislative history language infers that Title I money might be used as basic support, in certain instances.

13. Title I (ESEA) legislative history does not define supplementary or compensatory educational programs. Supporters of Title I felt the very nature of supplemental or creative, innovative programs might be damaged or restricted if there was an attempt to define supplemental or compensatory education programs. Therefore these are not specifically defined.

14. Likewise, regulations for Title I do not define supplemental or compensatory programs of Title I. On the contrary, it appears that some of the specific provisions of the Title I regulations are so general as to border on absurdity. EXAMPLE: 45 CFR 116.17(f) "The project . . . should be designed to meet the special educational needs of those educationally deprived children who have the greatest need for assistance. However, none of the educationally deprived children who are in need of the special educational services to be provided shall be denied the opportunity to participate in the project on the ground that they are not children from low-income families or on the ground that they are not attending school at the time." (emphasis added) Apparently, the regulations recognize at least two categories of children in educational need. The first category is children who have "the greatest need for assistance", and the second category is children "who are in need." In the definition section of the regulations, no distinction is made between these two categories of children, much less any other categories which might fall between these two categories.

15. Title IV, "Indian Education Act" is extremely important not only because of all of the effort and resultant documentation which preceded enactment of Title IV, but also because of the Congressional Declaration of Policy, 20 U.S.C. 241a a., which states: "In recognition of the special educational needs of Indian students in the United States . . ." Congress was giving special recogni-

tion to Indian students receiving education through state facilities. This language is extremely important since state educational agencies, as well as local educational agencies, are receiving this special mandate. This is the first time states have received a mandate from Congress which emphasizes the unique status of Indian Education. Until this language was adopted both Congress and administrative agencies had confined Indian legislation to the special needs of Indians "on or near" reservations.

Congress then defined Indian in much broader terms than previous federal legislation. ". . . the term 'Indian' means any individual who is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member . . ." The aforementioned language is important since the Indian preference case, specifically Morton v. Mancari, supra, and Morton v. Ruiz, supra, continue to make a distinction among Indians by the use of the term "on or near reservations."

As has been mentioned in earlier conclusions, the trend has been that Indian students are receiving more and more of their elementary and secondary education in public school systems of states. Unless future Indian education legislation and legislation in general contain language recognizing special Indian needs, Indian people who do not reside on or near reservations could lose special recognition by the federal government. Both Mancari and Ruiz draw a substantial amount of their legal rationale from what they term "the unique status of American Indians." It is conceivable that in the next generation or so, if Indian children continue to be educated in public or state schools, if future educational legislation does not specifically recognize the unique status of Indian people and Indian children in particular, or if the legislature fails to include a set-aside of funds for Indian students, the only educational funds for Indian children would be through general education legislation which provides funds and services to all students.

16. It appears that children of employees of the Atomic Energy Commission (AEC) are specifically excluded from P. L. 874 and further, that they have their own education system which is provided for by the Office of Education. If this is true, it would be interesting to consider a comparison between these two federal school systems; namely, AEC system and the BIA system. Such a comparison could include, but not be limited to, expenditures for each program, selection of curriculum, teacher qualifications and total over-all expenditures for each school system.

Recommendations

1. In any prospective educational enactment by Congress, an unequivocal recognition and declaration of policy should be set forth to the effect that elementary and secondary education has become of such significance

and has such substantial impact upon our society, that elementary and secondary education henceforth shall be recognized as tantamount to a constitutionally protected right.

2. Congress should set forth in unequivocal terms a definition of basic education for both elementary and secondary levels which should include minimum goals and objectives. Minimum standards or service of a basic education should be included. Such a definition would *not* require federal definition of curriculum, control of local policy, control of teacher selection or other matters which, by necessity, should be left to local control. The purpose of this definition would be to aid and assist states and federal grantees in the design of supplemental and compensatory programs best suited to provide elementary and secondary students with a minimum basic education. It would also provide the Office of Education and Congress a yardstick to measure success/failure of educational programs.

3. Congress should enact legislation which would require equalization of all state aggregate education expenditures from state sources. Precedent to such legislation, Congress should recognize that current state financing schemes based on land values are inherently inequitable and unfair to children living in property-tax poor school districts. The Supreme Court, in *Rodriguez*, concluded it was in no position to remedy such a massive and complex problem, but that the state legislature was

the appropriate level of government to deal with such a problem since it was much better equipped to do so. Furthermore, Congress has specifically recognized the inadequacies and inequities in state educational revenue designs. As early as 1950 the Commissioner of Education was authorized under P. L. 874 to consider factors which he deemed significant to increase LEA entitlements. Also, P. L. 874 requires a minimum or floor to assure the contribution rate of an LEA equalled a statutory minimum, i.e., 50 percent of the average per-pupil expenditure of a state or territory in the continental U.S. (45 CFR 115.32)

4. LEA entitlements for P. L. 874, Title I and Title IV, should be available to LEAs at least two years in advance, in order that needs assessments and priorities could be determined. This would facilitate efficient planning. Congress should fix a ceiling on the amount of entitlement per LEA (with the exception of a built-in inflation provision which would take into account any inflationary trend). In the event a situation arose where the LEA entitlement would be less than originally determined (P. L. 874 a substantial decrease of federal activities) the situation would inure to the benefit of the LEA whose priorities would have previously been established.

5. Title IV should be amended to provide for withholding of funds by the Commissioner of the Office of Education in the event LEA failed to "substantially comply" with initial assurances in LEA applications. (Similar to provisions of Title I)

6. Congress should specifically recognize the need for local control and adequately define guidelines, as well as specific powers, duties, responsibilities and limitations for Parent Advisory Committees (PACs). In addition, PACs should be provided expert technical assistance and other supportive back-up in order that they might better understand educational statutes and their respective role and set goals and objectives for themselves, identify problem areas and work in conjunction with local school administrators to provide solutions, PACs could develop solutions for problems which they identified, plan for the future, conduct needs assessments and determine priorities. PACs should evaluate their structure as well as the overall educational program. Therefore, PACs might require budgets in order to accomplish the aforementioned.

7. Johnson-O'Malley elementary and secondary educational services should be absorbed by Title IV. Johnson-O'Malley should be used to establish Voc-tech centers and institutions and emphasize recruiting Indian student drop-outs from secondary schools. Johnson-O'Malley should be used to establish and maintain community colleges for Indian people of all ages. These institutions should be eligible for Title IV Part B and Part C grants. Finally, Johnson-O'Malley should be used to provide welfare services for all Indian people (age should not be a factor in determining eligibility). Agricultural assistance programs should be studied to determine feasibility

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for community college curriculum. Indian Tribes, organizations and associations should be afforded preference to contract with BIA for these services.

8. To effectuate the preceding recommendation, the Office of Education should immediately implement a program to compile a comprehensive data bank of information regarding Indian students within each state. While such a transition might require substantial study, nevertheless, the transfer of responsibility for education of Indian children would be beneficial to Indian children, assuming recommendation number 10 and 11 are also adopted.

9. Direct channels for communication and policy formulation should be developed and implemented between the Office of Education and BIA regarding federal Indian school programs in addition to Johnson-O'Malley programs. Eventually the Office of Education should assume responsibility for the Bureaus' school system. This recommendation is predicated upon the adoption of recommendations 10 and 11.

10. Any future education statute enacted by Congress should include a section (hereinafter referred to as the Indian Section), which would specifically recognize the special educational needs of Indian children and implicitly, if not explicitly, acknowledge a federal obligation to Indian children as a result. Any entitlement to an SEA or LEA therefore, would also, by implication, include an entitlement to Indian children.

Also within the Indian section of each statute, a set-aside clause should be included. This clause would guarantee that Indian children would receive an entitlement of federal funds no less than the average per-pupil allocation for non-Indian children within the state.

Furthermore, a clause should be included within the Indian section to specify that the "Indian entitlement" set-aside shall be solely and exclusively for the benefit of Indian children (their respective needs would be covered by the general purpose of the statute).

An additional clause under the Indian section of such a statute should include the definition of Indian as is found in Title IV (Indian Education Act).

An additional clause should be included within the Indian section to state the policy of the Indian section, that is, Indian Parent Advisory Council (which might serve for more than one statute shall be established and granted powers and responsibilities as currently set forth in the new Johnson-O'Malley regulations.

Finally, a clause to the effect that the Indian section of the statute shall comply with all other provisions of the statute not inconsistent with the policy of the U. S. Government toward Indian children.

11. A new statute should be enacted (Indian Education Omnibus Act) which would set forth in its policy statement a recognition of the speical education needs of Indian children and implicitly, if not explicitly, state a resulting obligation toward the special education

needs of Indian children. The Indian Education Omnibus Act should be enacted in conjunction with recommendation number 10 and would provide for the establishment of State Indian Education Agencies (SIEA) within each state (SEA).

The SIEA would be primarily responsible to the state; however, due to the policy as set forth in the policy section of the enabling statute, the SIEA would be accountable to the Deputy Commissioner of Indian Education of the United State Office of Education.

All entitlements due a state (each Indian set-aside) would go to the SIEA directly which would, in turn, administer and monitor all Indian Education funds within the state.

All applications for entitlements for any Indian educational programs would be submitted to the SIEA office. This would include non-LEAs as currently defined under Title IV Parts B and C.

Every recipient LEA shall be required to have an Indian Parent Advisory Committee (IPAC) with the same authority, powers and duties as PACs under the new Johnson-O'Malley regulations.

Employment within the SIEA office (as well as non-LEAs) shall provide for Indian preference. The Indian Education Omnibus Act would also adopt the Indian preference exclusion, a part of the 1964 Civil Rights Act as amended in 1972. The rationale for this exclusion would be that the federal government is reaffirming its long-standing practice to allow Indians preference in managing their own affairs. Both the Congress and the Supreme Court have determined that local control is an essential element of education. Indian people should be afforded preference in employment where Indians are managing their own affairs, specifically, providing education for their children.

Existing "contract" schools shall receive entitlement on a co-equal basis with LEAs. Since the federal school system shall be phased out, and those duties and responsibilities transferred to the Office of Education, it shall be the duty of the Deputy Commissioner of Indian Education to perform studies and surveys to determine the feasibility of increasing the number of contract schools and the possibility of allowing new contract schools in order to absorb the federal schools.

Appropriate fiscal audit procedures should be developed in order to determine if funds expended by LEAs are being spent for purposes set forth in applications.

Appropriate evaluation procedures shall be performed by the respective LEAs and non-LEAs to insure that goals are being achieved.

The Deputy Commissioner of Indian Education or his authorized agent shall be allowed authority to conduct site visits with or without prior notice to the state. However, any such attempt on Indian reservations should not occur unless appropriate Tribal authorities consent.

The definition of Indian within this statute should be the same as the definition of Indian in Title IV (Indian Education Act).

The statute would also include a section to amend all existing education legislation, bringing them under the purview of this statute.

12. Public Law 874 should be amended to include a category of Indian children whose parents neither live on federal property nor are employed on federal property (as defined by the Act) and the definition of child should be amended to adopt the definition of Indian child which currently exists for Title IV (Indian Education Act.)

13. Title IV Part A should be amended to include a requirement that LEAs implement, as a part of their basic education program, those techniques and procedures which are found to be successful in Title IV Part A supplemental programs. (Title I presently requires such assurances from states, 45 CFR 116.25).

14. All state equalization plans should be studied by Congress to determine their effectiveness or inadequacies, if any.

Johnson-O'Malley Act

Evolution and Recognition of Need for Federal Aid to States

This discussion of factors affecting enactment of the Johnson-O'Malley Act[1] shall, by necessity, be confined to early federal governmental actions and policies which precipitated state involvement in the education of Indian children living within a state's boundaries. This approach, however, should not suggest that Johnson-O'Malley should be analyzed or studied standing alone. To the contrary, all historical facts affecting Indian education and, specifically, federal aid programs to states have played and continue to play vital roles in the study of state education for Indian children. Because Johnson-O'Malley is a vehicle whereby states use federal funds to educate Indian children, this discussion shall deal primarily with those factors which tended to create the climate for enactment of Johnson-O'Malley.

In reviewing early federal involvement of educating or civilizing Indians, four seemingly unrelated factors surface and color the eventual involvement of state governments' present educational role for Indian children. These four factors are (1) the historic educational concept of civilizing Indians -- Education; (2) the basic question -- what do we (Federal Government) do with them (Indians)?; (3) the various BIA Commissioners' personal attitudes and ideas and their resulting effect on implementation of BIA policies; and (4) as more and more western territories were admitted to Statehood, a jurisdictional question emerged, namely, was the federal government to continue providing all services for the various tribes and the individual members of those tribes, or, were the States to assume responsibility for those tribes and individual Indians living within a state's territorial boundary, and, if so, to what extent were the States to be involved? In the following sections, these factors shall be examined in light of the historical events which also affected Indian policy.

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[1] Act, April 16, 1934, 48 Stat. 596 (amended, 1936), 49 Stat. 1458, 25 U.S.C. 452-456.

1. During the early years of the United States, various treaties were executed by and between the federal government and Indian tribes which, on an ad hoc basis, made provision for various types of education, primarily, however, basic instruction in agricultural skills.[2] In 1802, Congress enacted legislation to promote civilization among the Indians.[3] Then, in 1819, the Congress enacted

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[2] For educational provisions of treaties, see: Industrial Training Schools for Indian Youths, H. Rept. No. 29, 46th Cong. 1st Sess. (1879); Industrial Training Schools for Indian Youths, H. Rept. No. 752, 46th Cong. 2nd Sess. (1880); Treaty items, Indian Appropriation Bill, H. Doc. No. 1030, 63rd Cong. 2nd Sess. (1914).

[3] Act of March 30, 1802, 2 Stat. 139, 143.

legislation specifically authorizing the President to employ individuals to teach, in addition to agriculture, "[Indian] children in reading, writing, and arithmetic . . . ."[4] This statute is the primary legal authority for the federal school system educating Indian people to this day. The appropriation section of the Act further stressed civilization of Indians, ". . . and for introducing among them [Indians] the habits and arts of civilization."[5] This Act eventually became known as the "Civilization Fund," due, in part, to the reliance of the federal government upon various religious and missionary groups, as well as the federal government using appropriated funds from this statute or fund in an attempt to "civilize" the various tribes. The reader should note the use of the word "civilization". During the early development of BIA educational policy, Indians were considered to be savages and, thus, needed to be civilized. It was only during the mid-1800's that the BIA began to refer to education of Indians in lieu of civilizing Indians.

2. Probably the most significant impetus providing direction of early Indian education administered by the federal government was the obvious desire for more land among the "white" citizenery. Throughout the geographically formative period of the United States,[6]

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[4] Act of March 3, 1819, 3 Stat. 516, R.S. 2071, 25 U.S.C. 271.

[5] Act of March 3, 1819, 3 Stat. 516 (Repealed 1873).

[6] 1780's through 1890's and possibly later.

constituting a span of time often categorized into three distinct periods by some scholars, namely, the Mission Period, the Treaty Period and the Allotment Period,[7] a very distinct Federal Indian policy surfaced -- What do we (Federal Government) do with them (Indians)? During this period, the nation was growing rapidly and the natural and obvious direction to grow was westward. Furthermore, this growth was interpreted by white citizens as requiring more land. In 1817, a date some scholars refer to as the beginning of the Treaty Period,[8] the first of the removal treaties was signed with the Cherokees.[9] The purpose of this treaty, as well as many subsequent treaties with other tribes, was to take the land currently occupied by the Cherokees and to remove members of the Tribe to remote areas of land to the West which were not foreseen as desirable by the "whites" at the time the treaty was obtained. However, this treaty was not totally successful in removing all of the Cherokees and getting all of the ceded land. Therefore, several other treaties were negotiated with the ultimate goal of getting the Cherokees to move west of the Mississippi River.[10] Ironically, many of these first removal treaties obtained from tribes by the federal government also created the first allotments,[11] i.e., fee title to Indians. However, it soon became clear that more often than not this approach was not accomplishing the desired result as rapidly as possible since each tribe required a separate treaty. Therefore, on March 15, 1854, the first treaty was executed by the federal government with the Ottoe Tribe wherein Tribal members were alloted specific tracts of land.[12] This was the first experiment in land allotment to individual Indians by the federal Government. The concept of allotment rapidly gained acceptance.

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[7] I. Indian Education Confronts the Seventies, 19 (V. Deloria, Jr., 1974), Special Subcomm. on Indian Education, Comm. on Labor and Public Welfare; Indian Education: A National Tragedy---A National Challenge, S. Rep. No. 501 91st Cong., 1st Sess. 106 (1969) (hereinafter cited as Subcomm. Report). The Special Senate Subcommittee on Indian Education was established with bipartisan support in 1967. Sen. Robert F. Kennedy served as Chairman until June 8, 1968. Sen. Wayne Morse served as the second Chairman and was succeeded by Sen. Edward M. Kennedy. The 220 page Report of the Senate Subcommittee has become a standard reference. See also, R. Havighurst, 5 The National Study of American Indian Education: The Education of Indian Children and Youth 27 (1970).

[8] Id.

[9] Treaty of July 8, 1817, 7 Stat. 156.

In an obscure portion of an appropriations Act in March of 1871, Congress terminated the treaty-making process of the federal government with Indian Tribes.[13] The relevant language is found as a paragraph immediately following appropriations for the Yankton Tribe of Sioux:

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[10] Treaty of February 27, 1819, 7 Stat. 195; Treaty of May 6, 1828, 7 Stat. 311, Id. at Art. 2.

[11] Treaty of July 8, 1817, Art 8, 7 Stat. 156.

[12] Treaty of March 15, 1854, 10 Stat. 1038; Certain tribal members received a fee simple title to a specific tract of land, subject to restriction of alienation.

> "For insurance and transportation of goods for the Yanktons, one thousand five hundred dollars: PROVIDED, That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: PROVIDED FURTHER, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe."[14]

While treaty-making was terminated prospectively, the statute's intention was not to invalidate or impair existing treaties. Generally, treaty provisions are designed to allow the President authority to determine Tribal need and thus, recommend appropriations for such needs. Generally, education provisions of treaties are also designed to allow Presidential recognition of Tribal needs and recommendation to Congress for sufficient appropriations to address the needs.[15]

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[13] 15 Stat. 544, 566 (1871).

[14] *Id*, at 566.

[15] e.g., Treaty with the Sioux Nations of Indians in Dakota, March 2, 1889, 25 Stat. 888, B94 (education provision of 1868 Treaty effective for 20 years); Treaty with the Navajo Indians, June 1, 1868, 15 Stat. 667, 669 (school, teacher, compulsory attendance); Treaty with the Cheyenne Indians, May 10, 1868, 15 Stat. 655, 657 (school, teacher, compulsory attendance); Treaty with the Crow Indians, May 7, 1868, 15 Stat. 649, 651 (school, teacher, compulsory attendance); Treaty with the Sioux Indians, April 29, 1868, 15 Stat. 635, 637-38 (school, teacher, compulsory attendance); Treaty with the Chippewa Indians, March 19, 1867, 16 Stat. 719, 720 (funds for school buildings); Treaty with Sacs, Foxes, Iowas, (continued)

Although Presidential authority with respect to educational provisions of treaties has not been exercised to a substantial extent for some time, the authority vested in the President to implement education provisions of treaties still exists.

On February 8, 1887, Congress passed the General Allotment Act (commonly called the Dawes Severalty Act),[16] which was intended, theoretically, to help further civilize the Indian, as stated by the Secretary of Interior at the time,

> ". . . the enjoyment and pride of the ownership of property being one of the most effective CIVILIZING agencies." (emphasis added)[17]

The rationale behind allotment was to civilize/educate the Indian to the "white man's" ways, in order that he might require less land. However, Commissioner John Collier, in his comments to terminate allotment in 1934, noted the glaring inequities of allotment.

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[15] (continued) March 16, 1861, 12 Stat. 1171, 1172-73 (school teacher, yearly stipends). For a more complete list of Treaties with education provisions, see U.S. Solicitor Department of Interior, Federal Indian Law 271 n.4 (2d rev. ed. 1958) For an explanation of some educational provisions, see Assistant Commissioner on Indian Affairs, Treaty Items, Indian Appropriation Bill, H. R. Doc. No. 1030, 63d Cong., 2nd Sess. (1914).

[16] Act, February 8, 1887, 22 Stat. 388.

[17] Report of the Secretary of the Interior, 1887, xi; see: Section I (A)(1) infra.

"Through sales by the Government of the fictitiously designated "surplus" lands; through sales by allottees after the trust period had ended or had been terminated by administrative act; and through sales by the Government of heirship land, virtually mandatory under the allotment act: Through these three methods, the total of Indian landholdings has been cut from 138,000,000 acres in 1887 to 48,000,000 acres in 1934.

These gross statistics, however, are misleading, for, of the remaining 48,000,000 acres, more than 20,000 acres are contained within areas which for special reasons have been exempted from the allotment law; whereas the land loss is chargeable exclusively against the allotment system.

Furthermore, that part of the allotted lands which has been lost is the most valuable part. Of the residual lands, taking all Indian-owned lands into account, nearly one half, or nearly 20,000,000 acres, are desert or semidesert lands.

Allotment, commenced at different dates and applied under varying conditions, has divested the Indians of their property at unequal speeds. For about 100,000 Indians the divestment has been absolute. They are totally landless as a result of allotment. On some of the reservations the divestment is as yet only partial and in part is only provisional. Many of the heirship lands, awaiting sale to whites under existing law, have not yet been sold, and the Indian title is not yet extinguished. Under the allotment system it inevitably will be extinguished.

The above statement relates solely to land losses. The facts can be summarized thus:

Through the allotment system, more than 80 percent of the land value belonging to all the Indians in 1887 has been taken away from them; more than 85 percent of the land value of all the allotted Indians has been taken away.

> And the allotment system, working down through the partitionment or sale of the land of deceased allottees, mathematically insures and practically requires that the remaining Indian allotted lands shall pass to whites. The allotment act contemplates total landlessness for the Indians of the third generation of each allotted tribe."[18]

At approximately the same time as the passage of the Dawes Severalty Act, the federal education system for Indians was expanding. This federal educational system was patterned after a school in Pennsylvania, known as the Carlisle Indian School, founded by General R. H. Pratt. According to one authority,[19] the school was fashioned after General Pratt's military background, i.e., a very rigid, militaristic, disciplinary system. The goal was to provide a maximum of coercive assimilation into white society. Additional boarding schools were created by the federal government and, although Carlisle Indian School is no longer in existence, several of the other boarding schools created during this period of time are still currently in operation.[20] The Carlisle School concept was continued by the BIA until the late 1920's and early 1930's, when glaring inadequacies were identified by the

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[18] Hearings, Committee on Indian Affairs, 73 Cong. 2nd Sess. on H.R. 7902, at 15-18 (1934).

[19] Alvin M. Josephy, Jr., "The Indian Heritage of America," Alfred A. Knopf, New York.

[20] Haskell Indian School, Kansas 1878; Chemawa Indian School, Oregon 1880; Chilocco Indian School, Oklahoma 1884; Albuquerque Indian School, New Mexico 1886, Stewart Indian School, Nevada 1890.

Meriam Report.[21] Since that time, some remedial changes have been made.

The federal government's intitial role in allowing states to educate Indian children occurred in 1890.[22] Although documentation is sketchy, it appears that direct contracts were executed between the BIA and various local community schools and school districts rather than the states themselves.

Although states were not authorized to compel Indian children to attend classes until 1920,[23] the federal government was becoming aware of the fact that its civilizing/educational process for Indian children could not significantly affect the assimilation of Indian children into white society unless the children could be legally compelled to attend federal schools. While some treaties touched on the issue of compulsory school attendance, it was not until 1891 that Congress mandated compulsory attendance.[24] In 1893, Congress gave compulsory attendance "teeth," when it passed a statute giving the Secretary of Interior discretionary power to,

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[21] Meriam, The Problem of Indian Administration (1928) [hereinafter cited as Meriam Report].

[22] Blanch, Educational Service For Indians, Staff Study No. 18, prepared for the Advisory Committee on Education (1939) at 34,35.

[23] Act, February 14, 1920, 41 Stat. 408, 410, 25 U.S.C. 282.

[24] Act, March 3, 1891, 26 Stat. 989, 1014, 25 U.S.C. 284, (repealed 1920).

> ". . . [P]revent the issuing of rations or the furnishing of subsistence either in money or in kind to the head of any Indian family for or on account of any Indian child or children between the ages of eight and twenty-one years who shall not have attended school during the preceding year in accordance with such regulations."[25]

This statute has never been repealed.[26]

The Bureau of Indian Affairs

Throughout the preceding discussion of federal Indian policy, one unequivocal and ominous fact was evident. The Nation was running out of land. Thus, the need for the "pushers," those within the federal government officially charged with implementing federal Indian policy.

In August, 1789, Congress established the War Department and it was from within the War Department that implementation of federal Indian policy was first to develop.[27] On March 11, 1824, the BIA was created within the War Department.[28] Quite naturally, the BIA was initially headed by military officers. However, in 1849, the BIA was transferred from the War Department to the newly created House Department of the Interior,[29] and the control of federal

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[25] Act, March 3, 1893, 27 Stat. 612, 628, 635, 25 U.S.C. 283.

[26] Id.

[27] Act, August 7, 1789, 1 Stat. 49, 50.

[28] H. Doc. No. 146, 19th Cong., 1st Sess., 6 (1824).

[29] Act, March 3, 1849, 9 Stat. 395, R.S. §441, 5 U.S.C. 485.

Indian policy was transferred from military to civilian control. For a thorough discussion of the attitudes and ideas of the various Commissioners of the BIA during the late eighteenth and entire nineteenth centuries, see Felix S. Cohen's, Handbook of Federal Indian Law.[30] Cohen quotes extensively from annual reports of many of the commissioners. Throughout Cohen's treatise, a basic theme develops, namely that there existed a direct correlation between the attitudes and ideas of the commissioner in office and the implementation of policies by the BIA. While the BIA was not charged with the lawful duty of determining basic federal Indian policy, but to provide federal services, nevertheless, the attitudes and ideas of the various commissioners substantially affected basic federal Indian policy decisions. The effect of the various commissioners' personal beliefs were apt to manifest themselves in varying degrees of humane treatment of Indians. While some commissioners advocated improving educational services and social services for Indians, the ultimate benefit for most Indian people was usually little more than better subsistence. The fact still remained that as more territories achieved statehood, land was becoming scarce and thus, the westward push continued.

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[30] U. S. Solicitor, Department of Interior, Federal Indian Law (2d rev. ed. 1958) [hereinafter cited as Federal Indian Law].

States

While the first contracts to educate Indian children between BIA and local communities were executed in the 1890's, states did not contract with the BIA until after enactment of the Johnson-O'Malley Act.[31] States with substantial Indian populations began to experience problems other states did not encounter. Many western states began to experience two specific problems with their Indian populations. First, most states established educational systems for their white children. These school systems relied primarily upon land tax schemes to finance these educational systems. States with large blocs of non-taxable Indian reservations or large blocs of restricted, non-taxable allotted Indian land could not raise revenue for educational systems from these restricted lands. Notwithstanding that fact, Indian children were beginning to attend state or 'public' schools. The second problem involved scattered or sometimes concentrated settlements of Indians who did not own or reside on non-taxable land, but whose children attended state or public schools. Therefore, many western states with large Indian populations felt the need for some kind of subsidy to alleviate the additional financial burden of Indian children attending state public schools. If the federal government was to exercise primary, if not sole responsibility for Indian people, what obligations and responsibilities were the states to have, if any, with regard to their respective Indian populations? This situation presented a new problem for state government: What was their role with respect to providing services to their respective Indian populations and how extensive would this new role be?

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[31] *Supra*, footnote 1.

In 1924, all Indians not citizens of the United States through some other mode (Treaty stipulation, allotment, marriage to a white, or service in the military) and who were born within the territorial limits of the United States became citizens of the United States, and likewise citizens of the state in which they resided.[32] Unfortunately, this action by the Congress did not have as significant an impact upon the states as might first be concluded. It only amplified the problem. Several members of Congress introduced various forms of welfare and education bills to the Congress in the 1920's to allow states to contract with the BIA to provide services for Indians; however, none were enacted into law. The Swing-Johnson Bill was such a bill.[33] The Swing-Johnson Bill recognized the need for state services for those Indians living within the State of California. However, 'services' did not specifically mean education,

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[32] Act, June 2, 1924, 43 Stat. 253, 8 U.S.C. 3 (amended 1940), P. L. 853, §504, 54 Stat. 1173.

[33] S. 3020, 69th Cong. 2nd Sess. (1926).

> "Providing that funds appropriated for the care and relief of Indians of California under the direction of the Secretary of the Interior shall be expended through certain public agencies of the State of California." (emphasis added)[34]

The Swing-Johnson Bill was never enacted into law but it is important since several other bills were also introduced during the 1920's with similar import. These bills raise two significant questions. First, what was contemplated in the use of the words, "care and relief of Indians"? Was Congress intending to recognize substantially greater duties and responsiblities for states with Indian populations? The language used suggests the latter. If the proposed legislation was attempting to address the Indian problems of states, what parameters, if any, would result? Secondly, were Swing-Johnson and the other similar bills attempting to absorb those Indians who no longer resided on federally restricted lands and who had, to some extent, mixed with the white population? Or, was Congress seeking to reimburse states due to a loss in revenues from state school funds because of the presence of blocs of federally held or restricted lands not subject to state taxation?[35]

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[34] *Id.*

[35] Funds similar in nature to Impact Aid Funds, Act, September 30, 1950, 64 Stat. 1100 (as amended), 20 U.S.C 236, *et seq*. Education Amendments of 1974, August 21, 1974, P. L. 93-380, ____ Stat. ____ (1974).

These questions were not specifically addressed at the time the bills were introduced. In 1928, the Meriam Report was published.[36] Although it did not provide specific answers to the questions raised by Swing-Johnson and the other bills, it did shed some light upon the BIA's practice of contracting with state school districts which were providing education for Indian children. In discussing finance and supervision, the report stated:

> "The *rate* of tuition paid by the national government is theoretically fixed to cover the loss to the State or local community resulting from non-taxation of Indian lands." (emphasis added)[37]

However, in 1930, John Collier, who was later to serve as Commissioner of the BIA during the enactment of the Johnson-O'Malley Act, speaking in his capacity as Executive Director of the American Indian Defense Association, Inc., said:

> "The great positive necessity for the bill [Swing-Johnson] grows out of the fact that the Federal Government does not now, and never can, provide adequate service in education, health and relief to the *scattered Indians* of the Pacific Coast, in the Dakotas . . . .
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> "These *Indians* are *scattered among the white populations, not only on Federal-trust-held Indian land, but off of such land*." (emphasis added)[38]

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[36] Meriam Report, see, footnote 18, *supra*.

[37] *Id* at 417.

[38] Statement of the American Indian Defense Association, Inc. (AIDA) on the Swing-Johnson Bill. February 5, 1930.

While the rationale for state service to Indians appears to be unclear, it was becoming apparent that the Congress recognized some degree of state responsibility for Indians. This conclusion is sustained by the following language from the Meriam Report:

> "The *policy* of the *national government* should *continue to be to get Indian children as rapidly as possible into public schools*, but the government should make certain at the same time that the fundamental needs of health care, home betterment, agricultural and industrial instruction, and other kinds of community education; are met." (emphasis added).[39]

Thus, states were becoming a factor in the federal government's Indian policy (what do we do with them?). However, the scope and extent of state responsibility for Indians to this day is yet undecided. Through this implicit policy, the BIA pushed toward the states a greater responsibility for the general welfare of Indian people. Included within the broad category of general welfare was education. Thus, the civilizing/educating process for Indian children became a matter of state concern. Commissioner Rhodes, in a memo in 1930, just four years before the Johnson-O'Malley Act was passed by Congress astutely noted:

> "[T]he time has arrived when *States* directly interested in the *civilization* and *advancement of Indians should begin to assume a greater responsiblity* in connection with Indian affairs and *especially* in matters relating to *education, medical care*, and relief of indigents." (emphasis added)[40]

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[39] Meriam Report, at 418, see, footnote 18, *supra*.

[40] Memo dated February 27, 1930.

It was from this historical backdrop that the Johnson-O'Malley Bill evolved. In addition to the factors mentioned in preceding sections, the nation was in the midst of the "Great Depression" and many new ideas were being codified as law. A new, very real problem was emerging during the several years preceding the enactment of Johnson-O'Malley which has not been solved even to this day, namely, the existence of two categories of Indians. On the one hand, there were Indian children educated by the federal government in boarding schools, day schools and mission schools. The other category of Indian children were those who were receiving their education in public schools (state institutions). These two categories of Indians shall be discussed in subsequent sections of this report.[41]

Congressional Development

The legislative history of the Johnson-O'Malley Act is quite brief. However, it was clear from the very beginning that Johnson-O'Malley was designed to provide much more than educational funds payable by the federal government to the states for certain Indian children attending public schools. Although Johnson-O'Malley in final form was brief, the specific provisions were astoundingly broad. Johnson-O'Malley was and is a massive health, education and welfare statute for Indian people.

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[41] See, section VIII C, *supra*.

From its introduction before the Senate,[42] until it became public law,[43] very few substantive changes were made.

S. 2571 was introduced and referred to the Senate Committee on Indian Affairs. It was reported out on March 20, 1934.[44] A similar bill was introduced in the House of Representatives[45] and was reported out on March 2, 1934.[46] Both Senate and House of Representatives Reports amended the original bill to require the Secretary of Interior to report annually to the Congress.[47] The Senate floor debate added one amendment, the word "territories" was inserted to allow inclusion of Alaska.[48] The House of Representatives (hereinafter referred to as House), debate added an additional section which specifically excluded Oklahoma from the Act.[49] In explaining his reason for wanting Oklahoma excluded from the Act, Congressman Hastings from Oklahoma stated:

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[42] S. 2571.

[43] Footnote 1, supra.

[44] S. Rept. No. 511, 73 Cong., 2nd Sess. (1934).

[45] H. J. Res. 257, 73 Cong., 2nd Sess. (1934).

[46] H. R. Rept. No. 864, 73 Cong., 2nd Sess. (1934).

[47] S. Rept. No. 511, 73 Cong. 2nd Sess. (1934), H.R. Rept. No. 864, 73 Cong. 2nd Sess. (1934) [hereinafter cited as Reports].

[48] 78 Cong. Rec. 5730 (1934).

[49] 78 Cong. Rec. 6148, 9 (1934).

> ". . . [W]e have five or six Indian agencies in the State of Oklahoma. They have representatives scattered throughout every county and every subdivision of the State, and I think the Indian Service is better equipped to render this service to the Indian than my State. I know that my State is not equipped to render this service as efficiently or as adequately or as sympathetic as the Indian Service, and for this reason I asked that the State of Oklahoma be excepted."[50]

Thus, Section Five of Johnson-O'Malley was added to the Act. Although the Congressional Record does not indicate this, Congressman Hastings was probably fearful that the Indian Service might be ready to relinquish many of its functions performed in Oklahoma at the time. While this conclusion is nothing more than speculation, the scope of the language of Johnson-O'Malley certainly suggested that it might be an attempt by the federal government to turn the Indian 'problems' over to the states.

Both the Senate and House Reports were extremely succinct in their discussion of the proposed bill, using almost identical language.[51] The only difference between the Reports was that the Senate Report contained two letters of approval for the Act, one from the Secretary of Interior, Harold L. Ickes, and the other from the Commissioner of Indian Affairs, John Collier, which was substantially the same letter which appeared in the Senate Report.[52]

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[50] Id at 6149.

[51] See, footnote 44, supra.

[52] Reports, see footnote 45, supra.

Both Reports use identical language in stating the *intent* of the bill:

> "This bill is *intended* particularly to *make it possible that the Department of Interior should arrange for* the *handling of certain Indian problems with those States* in which Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population." (emphasis added)[53]

In discussing health problems the Reports state:

> "This bill would make it possible for *State health agencies* to *take charge of Indian Health*, and for the Federal Government to bear the added expense." (emphasis added)[54]

While the Act appears to be far-reaching with respect to new services to be provided by the states for Indians living within the state(s), Congress appeared to limit this broad new area of state service in three manners. First, the class or category of Indian was limited to "Indians mixed with the general population." Secondly, the bill was not to be mandatory; the Secretary of the Interior, in his judgment, could determine when and if conditions were favorable to enter into such contracts, "The proposed *bill does not make* the *transfer* of any of these responsibilities for the welfare of the Indians *mandatory* . . . . It merely makes it possible that the *transfers may be made* when, in the *judgment of the Secretary of the Interior*, they *seem advisable*." (emphasis added)[55] Finally, the Congress appeared to consider the bill experimental, if not short termed. "The *contracts* will be regarded as experimental and may be cancelled at the expiration of short terms." (emphasis added).[56]

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[53] Reports, see, footnote 45, *supra*.

[54] Reports, see, footnote 45, *supra*.

[55] *Id*.

Even though Congress attempted to define perimeters for the bill, Johnson-O'Malley specifically provides but one restriction within the body of the Act: the discretion of the Secretary of the Interior, or acting through his lawful agent, the Commissioner of Indian Affairs. Theoretically, the Secretary could go out tomorrow and contract with any state or territory to perform all services for Indian people, all their educational needs, agricultural assistance and social welfare, including relief of distress, so long as the Secretary deemed it advisable.

Education Language

While the Johnson-O'Malley Act includes education as among those services which states could contract to provide, both the Senate and House Reports appear to be intending to limit such educational functions to a particular category or class of Indian. "The Indians in these sections are largely mixed with the white population, and it becomes advisable to fit them into the general public-school scheme rather than to provide separate schools for them."[57] Neither Report mentions any entitlement formula, local contribution rate for other non-Indian children attending public schools, per-pupil expenditures, state tax effort, presence of tax-exempt land, basic educational needs of Indian children, or any of the other factors presently used to define or restrict the scope of education. Only inferentially can it be said that Congress was intending a tuition type reimbursement arrangement.

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[56] Id.

[57] Id. -1.

Each Report states, "The Indian Service has already established the precedent of arranging with many local communities to take Indian children into the public schools, but it has lacked authority to transfer such functions on the broader basis to the states." (emphasis added).[58] Apparently, the BIA had been making contracts with individual schools where the federal grant would absorb the educational cost to the school for some Indian students. Further mention is made, in the Reports, of the expenditure to be borne by the federal government. "Where states take over these details of Indian administration (including education), the federal government in each will contribute to the expense incurred out of the money appropriated for Indian administration." (emphasis added).[59] Thus, Congress recognized a broad area of need of Indian people mixed within white society. While Congress specifically recognized education as one of those needs, almost no guidelines were provided to govern the Secretary of Interior in deciding where education would be beneficial to Indians, when a state was ready to assume educational services for Indians, to what degree, and the type of educative service which would be provided.

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[58] Reports, see, footnote 45, supra.

[59] Id.

Although neither House mentioned Section Three of the bill in their Reports, and Congressional debate is likewise silent, the Secretary is empowered inter alia to require a minimum standard of service from the states. "...Provided, that such minimum standards of service are not less than the highest maintained by the States or Territories with which said contract or contracts, as herein provided, are executed." (emphasis added)[60] This provision mandates the Secretary of Interior to require that Indian services provided by the states or territories be equal to the highest standards of the state or territory contracting with the Secretary of Interior. This section of the bill, which was enacted without any change, is probably the most important aspect of Johnson-O'Malley. While the Secretary of Interior is not required to enter into any contract, once a contract is executed, the Secretary of the Interior is duty bound and required to insure that the state service is equal to the highest standard of a state or territory. Thus, once the Secretary of Interior executes a contract with a state for the education of Indian children within that state, the Secretary must go further and require that such educational service is not less than the highest education service provided for other children receiving the same service from the state. The only conceivable limitation upon this duty of the Secretary of Interior would be a limit of funding necessary to insure such equal service. However, such a limitation is

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[60] Id.

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only implicit. The language of Section Three is quite clear. The ramifications of Section Three will be discussed further in succeeding sections of this report.[61]

Provisions of the Act

The Johnson-O'Malley Act is quite short, consisting of five sections. Section One provides the authority for the Secretary of the Interior, at his discretion, to contract with states or territories for services, including education, to be provided to Indians. The Indian must reside within the state or territory and the state must have authority to enter into such contracts. The Secretary of Interior is also empowered to expend funds appropriated by Congress for such services. Section Two empowers the Secretary of Interior to allow the state or territory use of federal property, both real and personal, for purposes of the Act. Section Three empowers the Secretary of Interior to make rules and regulations to carry out the provisions of the Act and to set minimum standards of service.[62] Section Four requires the Secretary of Interior to report annually to Congress all contracts and expenditures therefor. Section Five of the Act specifically excluded the State of Oklahoma from the provisions of the Act.[63]

The first two states to enter into contract for

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[61] Supra.

[62] See Section B(4), infra.

[63] See Section B(1), infra.

Johnson-O'Malley funds were California and Washington. In seeking funds for these contracts, the BIA states how they initially interpreted Johnson-O'Malley, specifically with regard to education, "The *amount* to be *paid* under the terms of the contract in each case was the *same as total tuition payments* to the *public school districts* of the state *during 1934*." (emphasis added)[64] The BIA went on to delineate between the types of services to be provided under the contracts as well as give an indication as to priority of educational needs:

> "These contracts provide for *education* of the Indian children; and *where required and to the extent* to which *funds are available* under the contracts, for their *transportation to and from school, for noonday lunches, text books, school supplies, school medical and dental services*; also, *as far as practicable* for *special courses* desirable for Indian children." (emphasis added)[65]

Then, in 1937, BIA's interpretation of Johnson-O'Malley became much clearer in appropriation hearings wherein BIA laid down its expectations for states to assume a portion of the financial burden of strictly educational services and BIA would allot more of its funds for 'special services.'

> "*When arrangements can be made* with the *public school district* to provide them, the *special services* (food, clothing, school supplies, etc.) are *included* in the *tuition* agreements and *furnished by the school district* . . . . We are from time to time requiring the States and districts where

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[64] Hearings before the Subcommittee of the House Committee on Appropriations, 74th Cong., 1st Sess., 874 (1935).

[65] *Id.*

> this can be arranged to assume the greater part of the strictly educational costs thus providing that an increased proportion of tuition paid shall be expended for special services.
>
> There are some States where there is no equalization law and the districts are still largely dependent of local taxation. Here the Indian Service must continue to assist with the actual cost of maintaining the schools as well as providing funds for the special services required for Indian children." (emphasis added)[66]

Thus, it appears that in early contracts with states under Johnson-O'Malley, the BIA was interpreting Johnson-O'Malley to pay tuition to the public schools for Indian students. The tuition payments were to include special services of food, clothing and school supplies, as well as medical assistance and, in some instances, transportation costs. Furthermore, BIA was seeking some state expenditure for solely educational costs when such arrangements could be made. The apparent reason was to allow more federal funds to be used for these special services.

From these appropriations hearings,[67] it further appears that the BIA recognized that in some states it was necessary that federal funds be used to cover both strictly educational services as well as special services. Finally, it appears that, in addition to special services (food, clothing, school supplies, medical assistance and, in some instances, transportation costs), special courses for Indian children were also needed. While these special courses are not specifically mentioned, it is significant that the BIA was recognizing special supplemental educational needs of Indian children as early as 1937.

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[66] Hearings before the Subcommittee of the House Committee on Appropriations, 74th Cong. 2nd Sess., 932 (1937).

[67] Id.

Amendment to Johnson-O'Malley Act (1936)

On August 20, 1935, the Secretary of the Interior in a letter to the Honorable Elmer Thomas, Chairman of the Senate's Committee on Indian Affairs requested the Johnson-O'Malley Act be amended because specific problems had come to light since its enactment. A copy of the letter is set forth in both the Senate and House Reports for the 1936 Amendments.[68]

The Secretary identified four specific problem areas. First, as a result of language in the Johnson-O'Malley Act, some states felt special authorizing legislation was required by the state. The language in question was, "(Secretary) . . . authorized, in his discretion, to enter into a contract . . . with any State . . . having legal authority so to do. . . ." (emphasis added)[69] Secondly, the BIA felt it more advisable to contract directly with particular state agencies, subdivisions of states rather than the states themselves. Third, the BIA wanted to contract with State colleges and universities and the Act did not provide for such contracts. Finally, the BIA might desire to contract directly with hospitals, schools, welfare organizations and agencies not under state supervision.

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[68] S.Rept. No. 1609, 74th Cong., 2nd Sess. (1936), H. R. Rept. No. 2603, 74th Cong. 2nd Sess. (1936), [hereinafter cited as 1936 Reports].

[69] Johnson-O'Malley, see, footnote 1, *supra*.

As a result of the request by the Secretary, Johnson-O'Malley was amended in 1936 with two substantive changes.[70] First, the Secretary was empowered to contract, in addition to states and territories, with ". . . (states) or political subdivisions thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency or institution . . . ."[71]

The second substantive change deleted the original Section Five of the 1934 Act, which specifically excluded Oklahoma. No record exists as to why Section Five was deleted.

Johnson O'Malley was amended two more times by Congress. One amendment occurred in 1960.[72] The Secretary of the Interior was no longer required to make an Annual Report to Congress. A second amendment was not as explicit as the amendment in 1960. In 1954, responsibility for medical care of Indians was transferred to PHS.[73] The effect on Johnson-O'Malley with regard to health services was therefore severely limited, if not specifically exluded.[74]

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[70] Act, June 4, 1936, 49 Stat. 1458.

[71] *Id*.

[72] Act, June 29, 1960, P. L. 86-533, 74 Stat. 245, 8, §15, (repelling 25 U.S.C. 455 [§4]).

It should be noted that Johnson-O'Malley is codified at 25 U.S.C. 452-456. This chapter of the United States Code is not entitled Education, it is entitled Miscellaneous.

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[73] Act, August 5, 1954, 68 Stat. 674, 42 U.S.C. §2001. Presumably, despite this transfer, the reference in §12 to the "Indian Office" has continuing application to the Indian Health Service. See, 5 CFR §213.2116(b)(8) (1974).

Public Law 81-874

Evolution and Recognition of Need for Federal Aid to States

This discussion of Impact Aid legislation shall be limited to discussion of Public Law 81-874[75] (P. L. 874). Actually, two laws were enacted in 1950 which dealt with Impact Aid to local education agencies in areas affected by Federal activities. The other impact aid statute was Public Law 81-815.[76] P. L. 815 was enacted by Congress to provide for construction of school facilities. While the two statutes have been considered as companion 'impact' legislation, this discussion shall be restricted to P. L. 874.

At the beginning of World War II, it was necessary for the federal government to initiate activities which required large tracts of land for substantial expansion of military and production activities because of the war effort. It was necessary to obtain these large tracts of land from state governments. These federal activities created a dual problem for states, and, specifically, state educational systems. In various states, the federal government acquired large blocks of state land, therefore removing them from state tax systems or schemes, which provided revenues for local schools. In addition to removing blocks of land from state tax rolls, the federal government's massive war activities created high concentrations of people to work in factories and military bases, as well as other production activities. These large concentrations of people naturally included elementary and secondary age school children. Many emergency war-time housing units were built. They were usually constructed upon land with very low tax values. Furthermore, the families residing in these housing units were concentrated at much greater density than other areas within the same community. While the federal government did make some payments to the states in lieu of taxes to remedy the problems, the payments were almost always insufficient to compensate for the loss of tax revenue from the newly acquired federally owned property. Nor did the payments adequately compensate local school districts for the substantial increase in numbers of elementary and secondary school age children. Many of these communities were called 'bedroom communities.'[77] 'Bedroom communities' were those in which people employed by the federal government or on federal installations resided in another community or school district.

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[75] Act, September 30, 1950, 64 Stat. 1100, 20 U.S.C. 236-244, Amended, Education Amendments, August 21, 1974, P. L. 93-380, ____ Stat. ____ (1974).

[76] Act, September 23, 1950, 64 Stat. 967, 20 U.S.C. 631-647 (as amended 1974).

In 1941, Congress recognized these severe burdens placed upon the states and, specifically, local school districts. Legislation was passed in an attempt to provide relief for the local school districts. This Act was commonly known as the Lanham Act.[78] Essentially, the Lanham Act provided assistance for construction of school facilities and maintenance and operation of schools in these over-burdened areas. However, this legislation was only temporary in nature. It was designed to remain in force and effect only from the date of its enactment until the end of hostilities.[79] It was to be discontinued immediately after Japan surrendered since, at that time, it was anticipated that a rapid and extensive demobilization of the Armed Forces and a re-adjustment to peace time conditions would occur immediately after the war. The anticipated military demobilization, and resulting re-adjustment to peace time, did not occur. The problems of states and local school districts continued. Recognizing this need for additional financial assistance to areas affected by federal activities, Congress continued appropriations to such districts on a yearly basis with the intent to withdraw all federal aid as soon as possible.[80]

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[77] H.R. Rep. No. 2287, 81st Cong., 2nd Sess. 5 (1950).

Recognizing the problems of states, and specifically, the local school districts, the House Committee on Education and Labor appointed two sub-committees to study the resulting effect of the federal government's massive effort on states and make their recommendations to the full committee.[81] Testimony was given in Washington, D. C. and at 24 locations in 16 states.[82] Testimony was received from representatives of 42 states. Both sub-committees' findings suggested that federal activities created severe financial burdens on adjacent school districts for two broad reasons.

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[78] Act, October 14, 1940, P. L. 849, 54 Stat. 1125, 42 U.S.C. 1521, et seq., (amended 1941) [Lanham Act became applicable to state schools]. Act, June 28, 1941, P. L. 147, 55 Stat. 361, §201; 42 U.S.C. 1531. The Lanham Act was originally enacted to provide public war housing but was expanded in 1941, to include payments for public works which included schools.

[79] Id.

[80] See, Act, September 10, 1949, P. L. 306, 63 Stat. 697.

1. "Federal ownership of property reduced local tax income for school purposes."
2. "A federal project or activity caused an influx of persons into a community, resulting in an increased number of children to be educated."[83]

Subsequent to the sub-committee surveys, a bill (H. R. 7940) was introduced on the 30th of March, 1950, designed to remedy the problems identified in the sub-committee's reports. In mid-June of 1950, H. R. 7940 was committed to the Committee of the Whole House after several drafts and amendments had been made.[84] The author of H. R. 7940, Congressman Bailey from Virginia, states the intent:

> "The intent of this legislation is to try to recompense the impacted school districts due to the war activities connected primarily with World War II."[85]

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[81] See, footnote 77, supra.

[82] 138 Cong. Rec. 10252 (1950), Congressman Bailey, (daily ed., July 13, 1950).

[83] Id. at 3 and 4.

[84] H. R. Rep. No. 2287, 81st Cong. 2nd Sess. (1950).

[85] 138 Cong. Rec. 10252, (daily ed., July 13, 1950).

Congressman Murray of Wisconsin raised the question of Indian children attending public schools.[86] Congressman Tom Steed from Oklahoma answered the question posed by Congressman Murry when Congressman Steed replied, "They (Indian children) will be exempted (the definition of the term 'child' you will see from this bill) because the *present Indian educational program is specifically exempted* by Johnson-O'Malley." (emphasis added)[87] This debate on H.R. 7940 illustrates that Congress, prior to enactment of P. L. 874, was not intending to include Indian children within the bill. As was stated by Congressman Bailey, the intent was to repay or "recompense" school districts due to federal war activities. Although H.R. 7940 was amended by the Senate, neither the Report from the Committee on Labor and Public Welfare[88] nor any of the debate subsequent to the Senate Report specifically addressed the question of Indian children's participation. Under the House version of the bill, the proposed legislation was to be permanent. However, the Senate was reluctant to make the proposed legislation permanent and limited its version of the bill to three years.[89] A compromise was proposed and agreed to by both

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[86] *Id.* at 10254.

[87] *Id.*

[88] S. Rept. 2458, 81st Cong. 2nd Sess. (1950).

[89] *Id.* at 4015.

Houses. The bill was to have a life of four years, during which time additional study could be made. Additional study could also be conducted after the bill was implemented in order to identify inadequacies and any new problem areas.[90]

There appeared to be some concern as to whether H.R. 7940 was, in fact, federal aid to education. Testimony during the debate before the House was very explicit. Federal expenditures under H.R. 7940 were to be used for no other purpose than to provide funds to certain state school districts wherein the federal government had removed taxable lands from the state taxing scheme which support local education, or substantially increased federal activities which placed an undue financial burden upon the local school district educating the additional school children. In addressing the issue of federal aid to education, Congressman Jonas posed this query, "What I am primarily interested in is whether or not this (H. R. 7940) is in any sense of the word, intentionally or unintentionally, directly or indirectly, a step toward federal aid to education."[91] In response to the question, Congressman Brown replied, "This is solely a matter wherein the federal government is to pay its fair share of the costs of maintaining schools in areas where the government itself has a specific interest, land, property, or where the number of government employees are crowding the public schools."[92]

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[90] H.R. Rept. 3109, 81st Cong. 2nd Sess. (1950).

[91] 138 Cong. Rec. 10248 (daily ed., July 13, 1950).

[92] Id. at 10248.

Later, during the same session of debate, Congressman Judd, expressing approval for the bill noted, "I have resolutely opposed Federal aid to education where Federal money would be given to every teacher or for every child in areas where they do not need it as well as areas where they do."[93] The general attitude of the Congress also posed similar views with respect to the scope of H.R. 7940.

After both the House and Senate could not come to agreement upon specific provisions, H. R. 7940 was committed to a Conference Committee and, was subsequently reported out on the 18th of September, 1950.[94] Several changes were made, but the intent of the H. R. 7940 was not altered. On the 18th of September, 1950, the Senate agreed to the Conference Report. Thereafter, on the 20th of September, the House agreed to the Conference Report and the bill was approved and signed into law on the 30th of September, 1950.[95]

As can be seen from the foregoing discussion, P. L. 874 was designed by Congress to provide funds "in lieu of taxes" to those states which qualified within the terms of P. L. 874. Although Indian children generally and Indian children residing on Indian reservations were discussed in the legislative history, their presence within a state was not contemplated to be a basis for federal funds to LEA's.

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[93] Id at 10250.

[94] 138 Cong. Rec. 15223 (H. R. Rep. No. 3109, 81st Cong. 2nd Sess., 1950)

[95] P. L. 874, see, footnote 72, supra.

P. L. 874 as enacted in 1950 contained nine sections. It provided federal assistance to eligible LEA's under three sections. First, Section Two provided continuing payments (for the life of P. L, 874) to eligible LEA's on the basis of federally acquired property located within the territorial boundaries of an LEA. The second, Section Three, provided payments to LEAs for the presence of large numbers of school children due to certain federal activities. Finally, Section Four provided for payments to eligible LEA's which sustained "sudden and substantial" increase in LEA school attendance as a result of federal activities within the LEA district. Finally, a fourth provision for funds was found in Section Six. It provided for funds to be paid for education in certain unique circumstances. In essence, if the Commissioner of Education determined that no state revenues were available, and an LEA was unable to provide educational services for children who resided on federal property, the Commissioner was required by Section Six to provide those children free public education as defined in P. L. 874. Section Six of P. L. 874 was an apparent contradiction to Section Seven which provided in part, ". . . no department, agency, office, or employee of the United States shall exercise any discretion, supervision, or control over the personnel, curriculum, or program of instruction of *any school* system of any local or state education agency."[96] (emphasis added) In any event, these four sections constituted the four broad areas whereby the federal government could provide funds to LEAs, "in lieu of taxes," (assuming other eligibility criteria of P. L. 874 were met).

Section One contained the Declaration of Policy and was significant for two reasons. First, the federal government recognized it's responsibility to certain LEAs which were affected by the impact of certain federal activities. Secondly, as a result of it's responsibility, the Congress declared that the policy of the federal government was (for the life of P. L. 874) to provide financial assistance to those LEAs which sustained substantial financial burdens as a result of federal activities (as defined by P. L. 874). Specifically, Congress set forth four areas wherein an LEA might qualify (assuming other eligibility criteria were met) to receive financial assistance under the terms of P. L. 874:

> "the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or
>
> such agencies provide education for children residing on Federal property; or
>
> such agencies provide education for children whose parents are employed on Federal property; or

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[96] P. L. 874 Sec. 7(a), see, footnote 72, *supra*.

> there has been a sudden and substantial increase in school attendance as the result of Federal activities."[97]

Section 3a and 3b defined the category of children which would be used by an LEA in determining entitlement (or the amount of money which it could receive in the event it qualified under P. L. 874). Section 3a included that category of child who resided on federal property and had a parent employed on federal property. Section 3b provided an LEA one-half of the entitlement of a 3a child. A 3b child resided on federal property, or had a parent employed on federal property. Section 3c provided the formula whereby the Commissioner computed the "local contribution rate".

Section 3d provided a limitation of LEA eligibility and also provided an "absorption clause". However, the "absorption clause" was discretionary and was never exercised by the Commissioner. Section Four provided additional entitlements to LEAs which arose as a result of "sudden and substantial" increases in attendance which occured prior to enactment of the legislation or subsequently thereto.

Section Nine of the Act set forth definitions of terms used within P. L. 874. The term "federal property" referred to real property and included, ". . . real property held in trust by the United States for individual Indian Tribes, and real property held by individual Indian or Indian Tribes which is subject to restriction on alienation imposed by the United States."[98] However, the term "child" was defined to exclude Indian children eligible for Johnson-O'Malley. ". . . such term does not include any child who is a member, or the dependent of a member, of any Indian Tribal organization, recognized as such under the laws of the United States relating to Indian affairs, and who is eligible for educational services provided pursuant to a capital grant by the United States, or under the supervision of, or pursuant to a contract or other arrangement with, the Bureau of Indian Affairs."[99]

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[97] P. L. 874, §1, see, footnote 72, *supra*.

Thus, Indian children were excluded under three sections of P. L. 874. First, they were excluded under Section Two (Federal Acquisition of Real Property). In Section 2a, any payments under P. L. 874 to an LEA could not include "other Federal payments" and a proportionate amount should be deducted from P. L. 874 payments for such "Federal Payments." Section 2b defined "other Federal payments" as "any other payments, made with respect to Federal property." Thus in the event an LEA qualified for payments under P. L. 874 and was simultaneously receiving funds under Johnson-O'Malley, any payment would first be deducted from P. L. 874 entitlement as a result of the language in Section Two. Section 3g set forth a non-duplication provision whereby the Commissioner was required to deduct from any entitlement of an LEA other federal payments as defined in Section 2(b)(1).

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[98] P. L. 874, Sec. 9(1), see, footnote 72, *supra*.

[99] *Id* §9(2).

Finally, Section 9(2), the definition of a child specifically excluded from said definition any child who was a member of a Tribe "who is eligible" for other payments and specifically, contracts with the BIA Johnson-O'Malley.

It should be noted that Section 9 (No. 8) defines "state" to include Alaska, as well as Hawaii, Puerto Rico and the Virgin Islands.

Amendments

P. L. 874 was highly acclaimed by all parties affected, especially local school administrators. As result of broad based general public support, P. L. 874 has expanded broadly. This expansion, through Congressional Amendment, has taken two forms. Appropriations by Congress have increased substantially from original enactment of P. L. 874 to the present time. The number of participating LEAs has likewise increased. This is due, in part, to Congressional Amendment which broadened the categories of federal activities included within the purview of P. L. 874 as well as expanding the scope of P. L. 874 by removing various exclusions from the act.[100]

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[100] Through the amendment process P. L. 874 has been broadened and expanded 27 times; HEW, Twenty-Second Annual Report of the Commissioner of Education (1972) ,see, Educational Amendments 1974, August 21, 1974, P. L. 93-380, ____ Stat. ____.

The most significant amendment to P. L. 874 with respect to Indian children occurred in 1953.[101] The bill was H. R. 6078. While it proposed other amendments to P. L. 874, it was worded to include Indian children within the purview of P. L. 874.[102] Confusion developed between the Office of Education and BIA's interpretation of the proposed amendment. The Office of Education interpreted H.R. 6078 most advantageously for Indian children. During hearing on the H.R. 6078, the Associate Commission of Education stated the Office of Education's interpretation.[103]

> "The change proposed (H.R. 6078) would bring these Indian children under P. L. No. 874 and *would displace that part of the Johnson-O'Malley payments which relates to the financing of normal school services*. Johnson-O'Malley payments now cover costs of some special services not included in the P. L. 874 formula, such as lunches, health and welfare services, and special instructional costs for Indians. The draft bill *would not preclude payments under the Johnson-O'Malley Act* to cover the costs of such services when needed." (emphasis added).[104]

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[101] Act, August 8, 1953, 67 Stat. 530; (hereinafter cited as 1953 Amendment).

[102] H.R. Rep. No. 703, 83rd Cong., 1st Sess. 9 (1953); S. Rept. No. 714, 83rd Cong., 1st Sess. 5 (1953).

[103] Hearings on H. R. 6078 before the House Comm. on Ed. and Labor 83rd Cong. 1st Sess. 146 (1953).

[104] *Id*, see, also 342-47 (1953).

Thus the Office of Education viewed P. L. 874 and Johnson-O'Malley as compatible. When an LEA was eligible to receive both P. L. 874 and Johnson-O'Malley funds, the Johnson-O'Malley funds were to be used for purposes other than general school expenditures. The Office of Education delineated between general school expenditures, and other "supplemental" expenditures included lunches, health, and welfare services as well as special instructional costs for Indian children. The official BIA interpretation of the 1953 amendment appeared at 25 CFR 44.4(b):

> "The program will be administered to *accomodate unmet financial needs of school districts related to the presence of large blocks of non-taxable Indian owned property in the district or relatively large numbers of Indian children which create situations which local funds are inadequate to meet*. This Federal assistance program *shall be based on the need of the district for supplemental funds to maintain an adequate school after evidence of reasonable tax effort* and receipt of all other aids to the district without reflection on the status of Indian children." (emphasis added)[105]

The language of the Johnson-O'Malley regulations just quoted unequivocally provided that *all* Johnson-O'Malley expenditures were to be used as supplemental funds. However, the regulations did not clearly define supplemental funds. The only hint at a definition for supplemental funds was that the funds were to be used to "maintain adequate schools." It is not clear whether maintaining an adequate school included services to provide Indian children's lunches, health, and welfare aid or special instructional services. In an attempt to clarify the ambiguity which existed subsequent to the 1953 amendment the Office of Education requested clarification from BIA as to its interpretation and implementation of the Johnson-O'Malley regulations. The BIA responded in a memo dated August 26, 1955:

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[105] 25 CFR 44.4(b), (Published January 28, 1956; Republished December 4, 1956) (Redesignated, 25 CFR 33.4(b), December 24, 1957 ,Amended August 21, 1974).

> "The eligibility of school districts to receive funds under the Johnson-O'Malley Act is based on the financial need of the district when tax-exempt Indian owned lands and large numbers of Indian children within the school district create financial situations which local funds are not adequate to meet. Johnson-O'Malley funds for 'special services' including lunches and school supplies, are paid to a school district for indigent Indian peoples. Accordingly, the funds for 'educational services' are paid not on the basis of the individual Indian child, but on the basis of the financial need of the school district.
>
> Receipt of special funds by a school district does not, therefore, insure eligibility of the same school district for educational service funds. The school district may, and frequently does, receive Johnson-O'Malley funds for special services, but the Indian children attending the schools of the district are not eligible for educational services provided from funds pursuant to the Johnson-O'Malley Act."[106]

Both Senate and House Reports explicitly recognized that H.R. 6078 would not make both federal assistance plans (Johnson-O'Malley and P. L. 874) mutually exclusive, but that Johnson-O'Malley would take on a new supplemental character. The Senate used the following language:

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[106] Letter from BIA to Office of Education, dated August 26, 1955.

> "It is the purpose of the instant amendment (H.R. 6078) to shift from the BIA to the Commissioner of Education responsibility for making payments to local agencies to help meet general educational costs involved in providing education to these children.
>
> The authority of the BIA to provide education to such children in federally operated schools would not be affected by the amendment here proposed nor would the amendments diminish that Bureaus' authority to make payments to state educational agencies for school lunches, special transportational expenses, special instructional services, and all other services undertaken specially on behalf of the welfare or education of Indian children, which are outside that contemplated purview of Public Law 874 payments." (emphasis added)[107]

The House, in its discussion of H.R. 6078 used slightly different language; however, the intent was nevertheless clear:

> "It is the purpose of this amendment to permit states, which exercise their option, to become eligible to receive Public Law 874 payments with respect to their Indian children in lieu of educational payments under the Johnson-O'Malley Act. It is not intended that the exercise of such option shall preclude or in any way affect the eligibility of the electing state or any of its political subdivisions to participate in the Johnson-O'Malley program as respects health, welfare, or other non-educational services."[108]

While there was mention of an attempt to eliminate Johnson-O'Malley altogether,[109] such a consideration was postponed in lieu of the provision within H.R. 6078 to allow Governors of each state to elect whether their state was to participate in P. L. 874 or to look solely to Johnson-O'Malley for federal financial assistance. If a state elected to participate under P. L. 874, Congress intended Johnson-O'Malley funds could still be paid to the state for non-educational costs.

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[107] S. Rep. No. 714, 83rd Cong., 1st Sess. 6 (1953).

[108] H.R. Rep. No. 703, 83rd Cong. 1st Sess. 9 (1953).

[109] Id.

Since the Senate and House could not agree on the final draft of H.R. 6078 (none substantially affecting the new position with regard to Indian children) a Conference Committee was created. H.R. 6078 was favorably reported out from the Conference Committee on August 3, 1953.[110] The Conference Committee Report was accepted by both Houses and H.R. 6078 amended P. L. 874 on August 8, 1953.[111]

Thus the Department of Health, Education and Welfare and specifically the Office of Education received its first mandate from Congress to provide funds to states to educate Indian children. While it was possible that a few Indian children were receiving indirect benefits from P. L. 874 as originally enacted in 1950, the Office of Education was not required by law to provide funds to an LEA to educate Indian children. When a Governor elected to participate under P. L. 874 with respect to Indian children residing within his state.

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[110] H. R. Rep. No. 1092, 83rd Cong., 1st Sess. (Conf. Rep. 1953).

[111] Act, August 8, 1953, 67 Stat. 530 (1953) amending P. L. 874, see, footnote 72, supra.

P. L. 874 as amended did not lose its initial status as payments 'in lieu of taxes.' The original intent of P. L. 874 was not affected by the 1953 amendment. P. L. 874 was still designed to "recompence" states for tax losses due to certain federal impact activities. Funds paid to LEAs pursuant to P. L. 874 were not restricted in any manner. LEAs could expend P. L. 874 funds for any educational purpose, the same as any locally generated revenues.

The 1953 amendment to P. L. 874 added a new section to the original law. Essentially, Section 10 provided state Governors an option. Each Governor could elect to allow Indian children within his state to qualify his state for Johnson-O'Malley funds or he could elect to receive funds under P. L. 874. In the event a Governor elected to take under P. L. 874, an Indian child would be treated as a (3a) child, notwithstanding the possibility of both parents without regular employment on federal property. The Senate and House Reports explicitly stated that Johnson-O'Malley and P. L. 874 were not to be mutually exclusive. The 1953 amendment to P. L. 874 did not specify the manner in which Johnson-O'Malley funds would be used in the event a Governor elected to apply for P. L. 874 funds. The Johnson-O'Malley regulations were amended in 1956, but did not provide sufficient clarification.[112]

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[112] See, footnote 102, supra.

In fiscal year 1955-1956, 20 states elected to apply for P. L. 874 funds for Indian children living within their respective boundaries.[113] Furthermore, during the same fiscal year, ten of those 20 states also received funds under Johnson-O'Malley which totaled $1,027,000.[114] However, as has been mentioned in preceding sections, a substantial amount of confusion existed between Office of Education and BIA concerning interpretation and implementation of the two statutes. On the 26th of March, 1956, the Office of Education issued Bulletin No. 49 which set forth Office of Education policy for Indian children under P. L. 874. However, difficulties caused by lack of coordination between the Office of Education and BIA continued to exist. In addition, some states provided services to children which were not provided by other states. Since state educational services varied from state to state overlapping of expenditures from P. L. 874 funds and Johnson-O'Malley funds unavoidably occurred. Some states might consider transportation as an educational service (basic education), while other states might not. In some instances, LEAs within a state might exhibit similar disparities with respect to educational services.

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[113] Office of Education Inter-Office Memo dated October 11, 1956 from B. Alden Lillywhite through D. W. McKone to James Kelley.

[114] Id.

As a result of the confusion created by the 1953 Amendment to P. L. 874, Section 10, the Indian section was repealed in 1958.[115] The House Committee Reports sets forth the intent of Congress in repealing Section 10.[116]

> "H.R. 11378 (the 1958 amendment) makes a significant change in the treatment of school districts educating Indian children, by enabling them to accept payment under P. L. 874 without forfeiting the right to obtain payment under the Johnson-O'Malley Act for *special services* and for meeting educational problems under *extraordinary or exceptional circumstances* . . . and this connection (the 1958 amendment), prevents any duplicate payments for the same services." (emphasis added)[117]

Although the 1958 amendment to P. L. 874 again failed to set forth a distinction between the use of P. L. 874 funds and Johnson-O'Malley funds, the amendment did precipitate modification of the Johnson-O'Malley regulations to conform with language of the aforementioned House Report. The Johnson-O'Malley regulations were promulgated in 1958 and read as follows:

> "When school districts educating Indian children are eligible for Federal Aid under Public Law 874, 81st Cong. (64 Stat. 1100), as amended, *supplemental aid* under the act of April 16, 1934 (Johnson-O'Malley) . . . will be limited to meeting *educational problems under extraordinary or exceptional circumstances*."[118]

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[115] Act, August 12, 1958, 72 Stat. 559 (1958) (Amending P. L. 874), see, footnote 72, *supra*.

[116] H.R. Rept. No. 1532, 85th Cong. 2nd Sess. 3 (1958

[117] *Id*.

[118] 25 CFR 33.4(c); (Published, September 12, 1958) (Amended, August 21, 1974): see, footnote 102, *supra*.

The original intent of Congress in inacting P. L. 874 and all subsequent amendments have to this day remained unchanged, except that P. L. 874 has continued to expand through increased participation of LEAs and increased appropriations. P. L. 874 thus continues to "recompense" LEAs for federal "impact" activities.

Title I

Evolution and Recognition of Need for Federal Aid to States

In the mid 1960's the nation was first exposed to President Lyndon B. Johnson's 'Great Society.' In his State of the Union message to Congress in 1965, the President expressed one of the four major goals of education, to "bring better education to millions of disadvantaged youth who need it most." [119] On January 12, 1965, the President submitted his education message to Congress.[120] The statement of need for such comprehensive legislation is probably best set forth in the Senate Report on H.R. 2362.[121]

> ". . .There is a close relationship between poverty and lack of educational development and poor academic performance . . .Dropout rates follow in inverse ratio with income levels."
>
> ". . .They (children) have been conditioned by their home environment or lack thereof, so that they are not adaptable to ordinary education programs."
>
> ". . .[T]here is no lack of techniques, equipment, and materials which can be used or developed to meet this problem, but that the school districts which need the most are least able to provide the necessary financial support."

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[119] S. Rep. No. 148, 89th Cong., 1st Sess. 6(1965). H.R. 2362 was the bill which eventually became the Elementary and Secondary Education Act of 1965, enacted April 11, 1965, 79 Stat. 27., 20 U.S.C. 241 et seq., Amended, August 21, 1974, Education Amendments 1974, P. L. 93-380, ___ Stat. ___ (1974).

[120] Id. at 6.

[121] Id.

> ". . .Title I can be considered as another very potent instrument to be used in the eradication of poverty and its effects."[122]

On the same day the President's education message was submitted to Congress, two bills were introduced in the House. The first such bill was H.R. 2361.[123] The second bill was H.R. 2362.[124] Both bills were similar in import and both were directed at strengthening and improving educational quality and educational opportunities within the nation's elementary and secondary schools. The General Education Sub-Committee of the Committee on Education and Labor held hearings on both bills, and on March 8, 1965, the Committee reported favorably on H.R. 2362, after substitute language had been inserted.[125] Congressional debate occurred on the 24th, 25th, and 26th of March, 1965.[126]

In debate on H.R. 2362, Congressman Perkins of Kentucky succinctly stated the purpose of the bill.

> "The objective of this bill (H.R. 2362) is to use Education --the very best education we can provide-- for those who have been traditionally neglected by our schools and are most dangerously neglected today. If we can reduce the costs of crime, delinquency, unemployment, and welfare in the future by well-directed spending on education now, certainly, on

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[122] *Id.*

[123] Introduced by Congressman Powell of New York.

[124] Introduced by Congressman Perkins of Kentucky.

[125] H.Rep. No., 143, 89th Cong. 1st Sess. (1965).

[126] 111 Cong. Rec. 5727-5772, 5958-6022, 6112-6152 (1965).

> this count alone, we will have made a sound investment."127/

Congressman Powell used similar language when discussing the intent or purpose of H.R. 2362.

> "This bill before us will be legislating a basic principle--education for all of America's children without regard for poverty, cultural deprivation or any other artificial barrier.
>
> Title I (of H.R. 2362) would provide a billion dollars of Federal funds to strengthen educational opportunities for five million children living in families who received less than two thousand dollars a year. These young Americans have been penalized by poverty and the educational services have neglected to fill the gap in their educational experiences. Left unchecked, poverty's adverse affects become chronic, contagious, often leading to delinquency and crime."128/

At the conclusion of the debate, the House voted and passed H.R. 2362.

On January 12, 1965, S. 70 was introduced in the Senate.129/ This bill was similar in import to H.R. 2362 which was introduced in the House. The Sub-Committee on Education of the Committee on Labor and Public Welfare held hearings and during the hearings, S. 70 was laid aside in favor of H.R. 2362. The full Committee reported favorably on H.R. 2362 without amendment on April 6, 1965.130/ The bill was debated in the Senate on April 7, 8, and 9, 1965.131/

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[127] *Id.* at 5736.

[128] *Id.* 5733, 5734.

[129] Senator Morris of Oregon.

[130] See footnote 116, *supra*.

[131] 111 Cong. Rec. 7269-7270, 7291-7342, 7523-7538, 7541-7549, and 7550-7589.

Senator Morris, in his introductory remarks, stated the intent or purpose of H.R. 2362.

> "This new Title I recognizes that the impact of poverty creates a need for special programs and approaches in the schools to overcome the debilitating effects of the social conditions resulting from poverty. It further recognizes that the local educational agencies in most cases are unable to adequately finance these special programs and approaches and provides Federal funds for this purpose."[132]

Thus, it appears that both the House and Senate were considering a two-fold problem during debate on H.R. 2362. First, that poverty serves as a major stumbling block to the success of many children attending public schools. And that as a result of poverty, many children are categorized as educationally deprived. Secondly, the Congress recognized that in those LEAs offering educational opportunities to children who suffered from poverty, the LEAs themselves were likewise suffering from the same malady, namely poverty. Nowhere in the debate is reference specifically made to Indian children. The bill itself contemplated providing more adequate educational opportunities through Federal financial assistance to LEAs providing educational opportunities for poor children generally. However, since many Indian children attended public schools and fell within the poverty guideline of H.R. 2362, they too were entitled to participate in Title I programs.

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[132] Id.

On April 11, 1965, the Elementary and Secondary Act of 1965 was signed into law.[133] While in 1950, during Congressional debate on P. L. 874, various Congressmen were concerned with the possibility that P. L. 874 might be construed as federal aid to education, the enactment of the Elementary and Secondary Education Act of 1965 (hereinafter referred to as ESEA) did in fact provide federal aid to education. ESEA was, and is, extremely broad legislation. In providing federal financial assistance to LEAs which offer educational opportunities to educationally deprived children, Congress specifically intended to allow ESEA to be interpreted broadly. The purpose appears to provide flexibility for LEAs to develop innovative programs specially designed to benefit children who come from poverty-stricken homes. In a discussion of the use of funds by LEAs the Senate Report states:[134]

> "It is the intention of the proposed legislation not to prescribe these specific types of programs or projects that will be required in school districts. Rather, such matters are left to the discretion and judgment of the local public educational agencies since educational needs and requirements for strengthening educational opportunities for educationally deprived elementary and secondary school peoples will vary from state to state and district to district . . .
>
> There may be circumstances where a whole school system is a low income area and the best approach in meeting the needs of

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[133] See, footnote 116, supra, (hereinafter cited as Title I, unless otherwise noted).

[134] S. Rep. No. 146, 89th Cong. 1st Sess. (1965).

educationally deprived children would be to upgrade the regular program."[135]

ESEA amended P. L. 874 whereby P. L. 874 became Title I of P. L. 874. Title I of ESEA thus became Title II of P. L. 874. (For purposes of continuity, Title II of P. L. 874 shall hereinafter be referred to as Title I). While ESEA contained five (5) titles,[136] this discussion shall deal solely with Title I. Title I contained essentially twelve sections.

Section 201 (the first section) set forth the declaration of policy:

> "In recognition of the special educational needs of children of low income families and the impact that concentrations of low income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in this Title) to local education agencies serving areas with concentrations of children from low income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children."[137]

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[135] Id. at 9. For identical language, see H.R. Rep. No. 143, 89th Cong. 1st Sess. 5 (1965).

[136] Title II, School Library Resources provide textbooks, and other instructional materials; Title III, Supplemental Educational Centers and Services; Title IV, Cooperative Research; Title V, strengthening State Departments of Education, see footnote 116, *supra*.

[137] §2, see footnote 116, *supra*.

In the Declaration of Policy section, Congress recognized special educational needs of children from low income families. In addition, it recognized the impact of concentrations of low income families upon LEAs. Therefore, Congress declared it to be the policy of the federal Government to provide financial assistance to such LEAs. Such financial assistance was to be used to improve educational programs of the aforesaid LEAs. Again it should be noted that the language itself is extremely broad since Congress desired flexibility.

Section 203 sets forth the manner in which basic grants shall be computed. Such grants are to be computed on the basis of two factors. The first factor is the average per pupil expenditure throughout the entire state. The second factor is the sum of (1) the number of school age children in the district (ages 5-17, from families having an annual income of less than the "low income factor" [which initially was $2,000.00. However, it was increased to $4,000.00 by subsequent amendments]), and (2) the number of school age children in the district from families receiving an income in excess of the "low income factor" from payments under the program of aid to families with dependent children under a state plan approved under Title IV of the Social Security Act. However, when satisfactory data was not available, the Commissioner of Education (hereinafter referred to as Commissioner unless otherwise noted) is authorized to compute basic grants on the basis of children qualifying on a county-wide basis. During the first year the maximum entitlement was not to exceed thirty percent of the LEA budget for that year. In addition, an LEA could not qualify unless the number of school age children of families having incomes less than the "low income factor" totalled at least one hundred or such group of children consisted of at least three percent of the total number of school age children for said district, whichever was less. However, no grant would be awarded an LEA if said LEA had less than ten children.

Title I also provides special incentive grants for LEAs in the event said LEA could prove to the satisfaction of the Commissioner an increase in it's current budget of one hundred five percent (105%) from the second preceding year's aggregate expenditures. In other words, in the event an LEA could prove to the Commissioner that additional funds had been used to provide further educational services for all children, then in that event, the LEA might qualify for an incentive grant under Section 204.

Section 205 required that applications from LEAs must first be sent to the SEA. The SEA was required to determine the following: (a) that funds were to be used for programs specifically designed to meet the special needs of children coming from low income families (based on the "low income factor"), (b) whether all educationally deprived children, including those in private elementary and secondary schools, were to receive the special educational services and arrangements, (c) that the funds should go to a public agency, (d) that if construction projects were contained within the LEA plan, labor standards should be complied with, (e) adequate evaluation procedures must be built into the LEA plan to determine if the LEA is obtaining the desired result, (f) the LEA should report to the SEA, (g) LEA projects and programs should be compatible with existing OEO Community Action Programs, and (h) any educational research and effective procedures and policies should be adopted by the teachers within the LEA. Finally, the SEA is obligated to provide a hearing to the LEA when an application by an LEA to an SEA has been disapproved.

Section 206 sets forth SEA duties if it elects to apply for Title I funds. The state was required to file an application with the Commissioner setting forth three assurances: (a) funds received by the SEA should be expended for those purposes set forth in LEA applications; (b) appropriate fiscal control and fund accounting procedures would be adopted; and, (c) the SEA shall make periodic reports to the Commissioner and keep whatever records the Commissioner deemed necessary which he would use to verify the accuracy of the SEA reporting system. Finally, the Commissioner is required to grant a hearing to an SEA in the event said SEA's application is disapproved by the Commissioner

Section 210 provided that the Commissioner withhold payments from an SEA when he determined that an SEA failed to comply substantially with any assurance set forth in the SEA application. Such withholding would continue until the Commissioner was satisfied that such non-compliance had been remedied.

Section 211 provided SEA's with judicial review in the event the Commissioner's action was arbitrary in denying an SEA application.

The final significant provision of Title I was the creation of a National Advisory Council.[138] The duty and function of the National Advisory Council was to review the administration and operation of Title I. Furthermore, the National Advisory Council was to make recommendations for improvement of Title I.

Subsequent to the original enactment of Title I, in 1965, amendments have increased the eligibility, thus allowing greater participation. Furthermore, appropriations have steadily increased. However, the original intent of Congress has not changed. Basic grants have been broadened to include children from institutions who are neglected or delinquent if the state provided educational service for said children. In addition, there is a new category of special grants for urban and rural schools serving areas with the highest concentrations of children from low income families.[139] Migratory children of migratory agricultural workers have also been included within the purview of the Act.[140]

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[138] Title I, Sec. 2, see footnote 119, supra.

[139] Act, April 13, 1970, amending Title I, 84 Stat. 1-7, 20 U.S.C. 241d-11. See, footnote 119, supra.

In 1967, the BIA was provided a set-aside sum of funds from Title I to be administered by the Bureau. The sum was to be agreed persuant to an "agreement" between the Commissioner of Education and the Secretary of the Interior.[141] However, this study does not include the BIA set-aside. Therefore discussion shall be limited to Title I expenditures through the Office of Education. It was slightly more than two years subsequent to the enactment of Title I that the Senate Committee on Labor and Public Welfare specifically directed its attention toward the complicated problem of Indian Education.

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[140] Act, Jan. 2, 1968, 81 Stat. 783, 784, 786, 787 (1968) 20 U.S.C. 241(c), amending Title I, see footnote 128, supra.

[141] S. Rep. No. 165, 90th Cong., 1st Sess. (1967).

Title IV., (Indian Education Act), Public Law 92-318

Evolution and Recognition of Need
For Federal Aid to States

On August 31st, 1967, the Senate Committee on Labor and Public Welfare authorized a special sub-committee on Indian Education.[142] The purpose of the special sub-committee on Indian Education was to "examine, investigate, and make a complete study of any and all matters pertaining to the education of Indian children."[143] Extensive hearings were held which covered a broad range of topics with respect to Indian Education. Not only was testimony presented from numerous education scholars, but many Indian educators also provided testimony. In addition, public hearings were conducted from December, 1967 through mid-April, 1969.[144] As a result of this comprehesive study, the special sub-committee made sixty recommendations.[145] The Indian Education Act [146] (hereinafter referred to as Title IV) was an attempt to remedy some of the problems identified by the special sub-committee on Indian Education. Title IV was not a comprehensive legislative package to solve all the problems of Indian Education, only those problems which embraced public school education of Indian children at the elementary and secondary levels and, to some extent, adult education.

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[142] S.Res. No. 165, 90th Cong., 1st Sess. (1967).

[143] Id.

[144] Hearings on Indian Ed. before the Sub. Comm. on Indian Ed. of the Comm. on Labor and Public Welfare, U.S. Sen., 91st. Cong., 1st Sess. Vol. I & II (1969). The special sub-committee also produced five committee prints: (1) "The Education of American Indians: Survey of the Research Literature," Feb. 1969; (2) "The Education of American Indians: Field Investigation and Research Reports," Oct. 1969; (3) "The Education of American Indians: A Compendium of Federal Boarding School Evaluations," Oct. 1969; (4) "The Education of American Indians: A Compilation of Statutes," Oct. 1969; and (5) "The Education of American Indians: The Organization Question," Nov. 1969. See: Sub. Comm. Rep. footnote No. 7, supra.

Pre-Enactment Identification of Need For Federal Aid to States by Congress

Herschel Sahmaunt,[147] in an article appearing in the Education Journal of the Institute for the Development of Indian Law,[148] succinctly described the chain of procedural events which ultimately produced Title IV as law.

> "Senate Bill S-659, a bill designed to amend the Higher Education Act of 1965, the

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[145] Sub-Comm. Rep. at 105-136, see footnote No. 7, supra.

[146] Ind. Ed. Act., Title IV of P.L. 92-318, 86 Stat. 334-345, 20 U.S.C. §§241aa, 842, 880b-3a, 887c, 1119a, 1211a, 1221 (1972), amended August 21, 1974, Education Amendments 1974, P.L. 93-380, ___Stat.____, (hereinafter cited as Title IV, unless otherwise noted).

[147] Currently Executive Director of the National Indian Education Association, Inc.

[148] H. Sahmaunt, "An Indian Education Leader Speaks Out," Vol. 1, No. 7 Education Journal, Institute for Development of Indian Law (March, 1973).

Vocational Education Act of 1963, the General Education Provision's Act, the Elementary and Secondary Education Act of 1965, Public Law 874, Eighty-First Congress, and related acts, and for other purposes, was introduced in the 92nd Congress on February 8, 1971. On February 25, 1971, Amendment No. 6 was attached to S-659, becoming Title V of that Bill. This amendment dealt with Indian Education services to American Indians. Hearings in April of 1971 resulted in negative testimony relative to the National Board of Education, the omission of the BIA from the ESEA amendments and the definition of an Indian.

"In August 1971, an altered form of Amendment No. 6 emerged as Title IV of S-659. The change was most noticeable in the National Board which took on an advisory council. Reaction from Indian groups, the BIA, and others created a jurisdictional conflict which was resolved by withdrawing Title IV from S-659 and re-introducing it as S-2482 and jointly referred to as the Committee on Labor and Public Welfare and Interior and Insular Affairs. During September both Committees considered and reported favorably upon the bill which then passed the Senate on October 8, 1971. H.R.-11390, a companion Bill to S-2482, as amended, was introduced into the House of Representatives by Congressman Anderson of California. Meanwhile S-2482 was re-incorporated into S-659 as Title IV.

"Hearings were held during January, 1972, by Congressman Meeds on Bills S-2482 and H.R.-8937. H R.-8937 was a bill introduced by Congressman Meeds and was entitled the Indian Education Act of 1971. Hearings were held in New Mexico, California, Washington State, Alaska, and Minnesota by Congressman Meeds. Finally in May, 1972, both Houses of Congress submitted conference reports which passed both Houses..."[149]

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[149] Id. at 6. See: Remarks of Senator Fannin during the debate in the Senate for appropriations for Title IV., 118 Cong. Rec. 16438 (daily ed. September 29, 1972).

During Senate debate, Senator Kennedy of Massachusetts summarized the findings of the special sub-committee as well as the overall intent of Title IV when he stated:

> "Its (Title IV) thrust and intent, as well as its specific provisions, emphasize Indian involvement and participation and control to the greatest feasible extent at the local level."[150]

Noting that local school districts also have a responsibility for Indian Education, the Senator went on to say,

> "...the Indian education sub-committee concluded that the *Federal Government* had *failed* to live up to its responsibilities in providing funds and leadership for assisting public school districts to better understand and meet the special needs of Indian students.
>
> We have concluded that our national policies for educating American Indians are a failure of major proportions." (emphasis added).[151]

The Senator's comments recognize a federal responsibility owed to state governments to "better understand and meet the special needs of Indian students." In subsequently enacting S-2482, the federal government redirected in part, its responsibility for educating Indian children and looked specifically to state governments to assume a portion of the federal responsibility for educating Indian children in public schools.

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[150] Remarks of Senator Kennedy from Massachusetts, 117 Cong. Rec. 16128 (daily ed. Oct. 8, 1971).

[151] *Id.* at 16126.

The paramount obstacle to comprehensive education legislation for Indian children attending public schools is reaching all Indian students. This problem was noted during debate on S-2482.

> "Indian Education does not lend itself to simplistic or monolithic approaches. There are over 450 recognized tribes in the United States and over 230 spoken Indian languages. Education services for Indian children are provided by State school systems, mission schools, private schools, Bureau-operated schools, special schools for the handicapped, and private corporations. Some BIA schools are day schools, some are off-reservation boarding schools. Some Bureau schools are run by the local Indian community; some have Indian advisory school boards; some have no local Indian involvement in school programs or policies."152/

Although this study is primarily directed at public school obligations and responsibilities under the four statutes under study, nevertheless, many of the problems identified by Senator Kennedy exist simultaneously and constantly interact, thus compounding the complexity of Indian Education.

In discussing Indian Education legislation in general, and S-2482 specifically, the Senator noted two principles of which Congress should be mindful.

> "All legislation and administration activities must be fully committed to two principles: (1) Local community involvement in the formulation of educational policies and operation of programs; (2) and an adequate funding base to support exemplary educational systems."153/

152/ Id. 16124.

153/ Id. 16124.

S-2482 and its predecessors exemplify the principle of local community involvement.

> "...The Bill as originally introduced was addressed to be molded and built upon by the Indian people. All totaled, over one-thousand (1,000) copies of the Bill were circulated amont Tribal Chairmen, Indian organizations, Indian publications, and educators. In April and May (1971), the Education Sub-committee held three days of hearings on the Indian education amendment, and testimony, statements and correspondence relating to that amendment constitute over 465 pages of hearing record."[154]

Not only did Indian people contribute to the provisions of S-2482, the Bill broadened that class of Indian who would fall within the purview of the legislation. Heretofore, only federally-recognized Indians[155] benefited from federal education legislation directly. While some Indians were recipients of federal education legislation funds indirectly either because of poverty or some other criteria, Congress was now contemplating inclusion of all Indians residing within the United States as eligible for services under S.2482. The following language exemplifies this policy and recognizes the cause for many Indian tribes as well as Indian individuals presently non-eligible (and non-recognized) by existing federal education legislation.

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[154] *Id.*

[155] Those Indians eligible for services under the BIA, i.e., federally-recognized tribes with a quantum of 1/4 or more Indian blood. The first limitation by quantum of blood for some services appeared in the JOM regulations at 25 CFR 46.11 (promulgated Nov.10, 1944). The statute cited as authority was 25 U.S.C. 454 §3, 49 Stat. 1459, which does not expressly or implicitly refer to quantum of blood.

> "One general principle which applies to the range of Indian education programs established in this Bill is that they are addressed to *all Indians*, Eskimos, and Aleuts, in this country. The Bill generally recognizes that as to urban Indians, terminated tribes, and other non-Federal Indians, there exists a *responsibility* on the part of the *Federal Government* -- at minimum remedial in nature -- to provide educational assistance. Both the *termination policies* of the 50's and the continuing *relocation programs* have *intensified the impoverishment and educational deprivation of many of the so-called non-Federal Indians*. Thus the grant and entitlement provisions of this Bill, by applying *all Indians*, are directed in part at remedying the consequences of past Federal policies and programs." (emphasis added).[156]

This language is a recognition of past federal policies and practices which caused a dilemma for many Indians. Those Indians who were the end product of federal policy to "assimilate" Indians into the "white" society were experiencing some of the most severe, adverse effects. While federal policy had been to provide services to federally-recognized Indians living on or near reservations, no such federal commitment has been extended to federally-recognized Indians living in urban areas, or not living on or near reservations. In addition, non-federally-recognized Indians, so deemed solely because of past federal policies and practices, were not heretofore eligible for federal Indian legislation, and Johnson-O'Malley specifically.

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[156] *Id.* S-16126.

On October 1, 1971, both the Committee on Labor and Public Welfare and the Committee on Interior and Insular Affairs submitted a joint report in support of S.2482.[157] The Committee on Labor and Public Welfare emphasized six (6) areas of Title IV of major significance.

(1) In discussing the new class of Indian to fall within the purview of Title IV, which was broad enough to encompass all Indians, the Committee stated "The Committee intends that the definition [of Indian] be viewed as inclusive rather than exclusive; for example, one standard that the Commissioner may adopt in administering this Part is one involving a community recognition mechanism, utilizing the Parent Committee to certify students as Indians. This approach might be particularly opposite in urban areas."[158]

(2) Discussion of the five percent "set-aside" (wherein non-LEA's could receive funds under Part A of the Act) was emphasized to insure maximum support for Indian controlled schools. "The Committee intends that the funds provided under this Section be used to support and encourage community run schools that may not be affiliated with the state system. . . .it is the intention of the Committee chat funds under Section 303(b) (the 5 percent set-aside for non-LEA's) be used to support these

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[157] S. Rep. No. 92-384, 92d Cong. 1st Sess. (1971).

[158] Id. at 18.

efforts and that the Commissioner actively solicit proposals for such Indian school development."[159]

(3) The Commissioner was also charged with an affirmative duty under Part B of the Title IV (developmental planning grants, which included as grantees, Indian Tribes, Indian educational agencies and organizations). "In the administration of these grants (Part B grants) the Commissioner should take affirmative action to insure that an adequate number and variety of applications from Indian sources have been filed for the funds available through this part. The Commissioner should assist Indian organizations in applying for these funds by providing information...technical assistance...and...all other appropriate assistance. There must be substantial participation by the parents of the children to be served in the tribal communities...in the planning, development, operation, and evaluation of the project."[160]

(4) In discussing the purpose for establishing the National Advisory Council on Indian Education, the committee sets forth its intent for the existence of such a council. "One of the primary findings of the Senate Special Sub-Committee on Indian Education and Education Sub-Committee hearings was evidence of an overriding

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[159] Id.

[160] Id. at 19.

paternalism in federal policy, resulting in programs and administration which crushed Indian culture and values. The Committee intends that the National Council composed of Indians and Alaska Natives, shall have sufficient policy voice in the Office of Education to reverse this paternalism."[161]

(5) The fifth area of concern by the Committee was providing adequate complaint procedures. The Committee noted "[i]n administering this Title, the Office of Education should establish a responsive complaint mechanism which would permit complaints of alleged violations of law or regulations to be brought to the highest appropriate level for consideration."[162] Thus it appears the Committee contemplated the possibility of misuse or misappropriation of funds specifically earmarked and specifically categorized to be used for the special educational needs of Indian children.

(6) The final area of concern by the Committee was the inadequate data bank for Indians within the Office of Education. "This Committee believes that in the past, the Office of Education has not recognized the priority needed in Indian Education and has failed to keep adequate data in this field. Furthermore, evaluation of programs funded

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[161] *Id.* at 21.

[162] *Id.*

by OEO and dissemination of program information has likewise proved inadequate. It is believed that the centralization of authority and responsibility and a new Bureau will go far towards remedying these past inadequacies."[163]

On October 8, 1971, S.2482 passed the Senate.[164] Meanwhile, the House was also considering Indian Education legislation. H.R. 11390 was such an educational bill. In January, 1972, Congressman Meeds conducted hearings on S.2482 and H.R.8937.[165] Prior to the hearings by the House, the general sub-committee for the Committee on Education and Labor, S.2482 was reincorporated into S.659 as Title IV.

In May, 1972, Conference Reports on S.659 were filed in each House.[166]. Subsequent thereto, the Conference Reports passed both Houses of the Congress.[167] And on June 23, 1972, the President signed S.659[168] and Title IV became law.

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[163] Id.

[164] Cong. Rec. 1614 (daily ed. Oct. 8, 1971).

[165] H.R.8937 was introduced by Congressman Meeds, entitled "Indian Education Act of 1971." Field hearings were conducted by the general sub-committee in Riverside, California; Seattle, Washington; Anchorage, Alaska on both S. 2482 and H.R.8937.

[166] S.Rep. No. 798, 92d Cong. 2d Sess. (1972); H.R. Rep. No. 92-1085, 92d Cong. 2d Sess. (1972).

[167] Id. Sen. May 24, 1972; House, June 8, 1972.

[168] The Ed. Amend. of 1972, June 23, 1972, P.L. 92-318, 86 Stat. 334.

Enactment of Title IV (Indian Education Act)
Public Law 92-318

Title IV was divided into five parts. Part A of Title IV amended the original P.L. 874, creating a new Title within P.L. 874. Thus, Title IV (Indian Education Act) Part A became a new Title III of P.L. 874.[169] For purposes of continuity, the Indian Education Act shall be referred to as Title IV(A), Title IV(B), or Title IV(C) as required to distinguish the three new programs of Title IV. The new Title III of P.L. 874 was entitled "Financial Assistance to Local Education Agencies for the Education of Indian Children."[170] Section 302(b) contains the declaration of policy.

> "In recognition of the special educational needs of Indian students in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local education agencies to develop and carry elementary and secondary school programs specially designed to meet these special educational needs.
>
> The Commissioner shall, in order to effectuate the policy set forth in Sub-Section (a), carry out a program of making grants to local education agencies which are entitled to payments under this Title and which have

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[169] Sec. 411(a), see footnote 141, supra.

[170] Id.

submitted, and had approved, applications
therefore, in accordance with the provisions
of this Title."[171] (emphasis added).

Section 303a provided the entitlement computation for LEA's under Title IV . Section 303b provided a five percent set-aside for non-LEA's to "schools on or near reservations." The category of non-LEA included those schools which had been in existence less than three years.

Section 304 of Title IV restricted the use of funds to plan to develop programs specifically to address the special needs of Indian children and maintenance and operation of "special" Indian programs. Funds might be used for minor remodeling of classrooms and for acquisition of necessary equipment.

Section 305a sets forth requirements for applications for grants under Title IV . Included within the requirements were the following: (1) a statement setting forth the activities and services to be provided by the LEA, (2) a description of the program which was to provide activities and services, (3) in the event funds were to be used for planning, additional restrictions were placed upon said application to require that planning be directly related to the programs or projects to be carried out by the LEA and that the planning funds were needed because of the "innovative nature" of the program, (4) applications were required to provide effective evaluation procedures at least on an annual basis, (5) applications were required to assure the Commissioner that the funds were to be used in a supplemental nature and not to supplant any other education funds currently being received by the Indian children, (6) adequate fiscal control and fund accounting were to be set forth in the application, and (7) the LEA's were required to make annual reports. In addition to the above, applications were to use the best available talents, including Indian people, and that the program or project had been developed in open consultation with parents of the Indian children, as well as Indian teachers and secondary school students. The consultation was to be conducted at "public hearings." Finally, a Parent Advisory Committee was to be established to aid and assist the LEA (or non-LEA). The purpose of the Parent Advisory Committee was to aid in the development of special programs for Indian children.

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[171] Id. §302.

Section 306 provides that no funds could be paid by the Commissioner to an LEA where said funds were also counted in a state-wide equalization plan. Furthermore, no funds could be paid by the Commissioner in the event that funds to the Indian children were less than the second preceding fiscal year.

Section 307 provides full entitlement (that is, the full amount to which an LEA would be entitled in the event sufficient appropriations were available) could not be paid due to lack of appropriations. In that event, the Commissioner was obligated to compute the amount of entitlement per LEA on an equitable basis.

Section 307b amended Title I of ESEA [172] whereby the Secretary of the Interior and Commissioner of Education were to enter into an agreement to provide adequate funds for Indian children attending schools under the jurisdiction of the Federal or BIA school system.

Section 307c is extremely important. Congress explicitly required an application which included 3a or 3b Indian children[173] to "set forth adequate assurance" that Indian children would participate "on an equitable basis" in the "school program" of the LEA. In the event "school program", as set forth in this sub-paragraph, meant the LEA basic educational program, Congress was going much further to insure P.L. 874 funds would be expended on a basis whereby Indian children would receive their proportionate share of P.L.874 funds. Thus, P.L. 874 was amended to provide two types of entitlement formula grants for Indian children. Under the original or standard P.L. 874 funds, LEA's were required to give adequate assurance that Indian children would participate on an equitable basis. Thus, Congress required some restraint on LEA's with respect to expenditure of standard P.L. 874

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[172] Section 307b, see; footnote 119, supra.

[173] The same categories of children for P.L. 874, see, footnote 75, supra.

funds. In addition, Section 307c(2)A provided, "the Commissioner shall exercise his authority under Section 425 of the General Education Provisions Act, to encourage local parental participation with respect to financial assistance under Title I of P.L. 874...based upon children who reside on, or reside with a parent employed on, Indian lands (emphasis added)."[174] Therefore, not only did Title IV A create a new category of funds for LEA's to provide special programs for Indian children, directed at their special needs, LEA's are also required to provide adequate assurance that standard or original P.L. 874 funds are being expended on an equitable basis for Indian children within the LEA. In addition, the Commissioner has an affirmative duty to encourage parental participation to insure Indian children are receiving an equitable portion of the standard or original P.L. 874 funds.

Title IV B was an amendment to Public Law 88-560[175] (Title VIII, Training and Fellowship Programs for Community Development). Section 421a apparently is a typographical error.[176]

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[174] See, footnote 145, supra.

[175] Act. Sept. 2, 1964, 78 Stat. 802, 20 U.S.C. §801-807, amended Aug. 21, 1974, Education Amendments of 1974, P.L. 93-380, ___ Stat. ____.

Section 810a requires the Commissioner to carry out a system of letting grants to improve educational opportunities for Indian children. These grants are to support planning, pilot and demonstration projects, to provide additional services for Indian children when such services are currently unavailable, and to provide grants to assist and establish pre-service and in-service training programs. Finally, to encourage the dissemination of information materials which may encourage educational opportunities for Indian children. Section 810b authorizes the Commissioner to let grants to SEA's and LEA's, along with Indian Tribes, organizations, and institutions to support the innovative bi-lingual and bi-cultural education programs, special health and nutrition services, and coordinating said programs with other federally-assisted programs. Section 810c provides that the Commissioner can also enter into grants to provide educational enrichment programs for Indian children either through SEA's, LEA's and/or Tribal or other Indian community organizations. Such programs may include pre-school programs, special programs for handicapped children, remedial instructional programs, said programs to use the newest and most creative approach available. Section 810d authorizes the Commissioner to enter into grants with SEA's and LEA's, as well as with institutions of higher education or colleges and universities, in order to provide educational services for instructors of Indian children. Such instructors could include teachers' aides, social workers, and other educational personnel. Section 810e authorizes the Commissioner to make grants or to enter into contracts with public agencies, institutions, Indian Tribes and organizations to provide dissemination of information and to provide program evaluation for the aforementioned programs. Section 810f specifies minimum requirements for applications under Title IV B. The Commissioner is directed not to approve any applications under Part B unless there has been adequate participation by the parents of children to be served. Furthermore, the Commissioner is directed to give priority to Indian organizations, agencies, and institutions which apply under Part B.

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[176] 20 U.S.C. §421(a), wherein it states that Title VIII of the Elementary and Secondary Education Act of 1965, as amended, is an apparent error since the Elementary and Secondary Education Act contained five titles and no more. See, footnote 131, supra, and footnote 116, supra.

Part C amends Title III of ESEA (The Adult Education Act).[177] The Commissioner is authorized to carry out a program of making grants to SEA's and LEA's, as well as to Indian Tribes, organizations, and institutions to support planning projects and demonstration projects which are designed to test the effectiveness of programs to provide basic literacy for all Indian adults who are non-literate. Furthermore, grants may also be let for the purpose of conducting research to develop innovative and effective techniques in achieving literacy for adult Indians. Again, the Commissioner may not enter into any such grant unless he is satisfied that adequate participation of those individuals to be served has occurred. The Commissioner is also directed to give priority to Indian Tribes with respect to grants under this subsection.

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[177] See, footnote 131, supra. See, also, Morton v. Mancari, 94 S.Ct. 2474, 41 L.Ed.2d 290 (Nos. 73-362 and 73-364, June 17, 1974.

Part D of Title IV creates the new Office of Indian Education. The Office is required to have the status of a Bureau. Part D also established a 15-member National Advisory Council on Indian Education. The Council was to be compiled of Indians or Alaska Natives to be appointed by the President of the United States.[178] The National Advisory Council was created to advise the Commissioner of Education with respect to the administration of programs under Title IV. They were to review applications under Parts A, B and C; to evaluate the programs; to provide technical assistance to recipient LEA's, non-LEA's, and those receiving grants under Part B; to assist the Commissioner in developing regulations for the administration of Part A; and to prepare a report annually to Congress.

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[178] President Richard M. Nixon failed to appoint such a body until threatened by Court action. The first Advisory Council was appointed on May 3, 1973. See, Minnesota Chippewa Tribe, et al. v. Weinberger, C.A. No. 175-73, D.C. Dist. Court (decided May 8, 1973).

The final part of Title IV was Part E. Part E amended the Higher Education Act of 1965 to include a new section. The new section provided that no less than five percent of the appropriations under the Higher Education Act of 1965 would be used to prepare teachers instructing children living on reservations, in schools operated or supported by the Department of the Interior. The most notable portion of this amendment was that Congress gave a preference to Indians to be trained under this section.[179]

Part E also set forth a new definition of Indian. Due to the significance of the new definition, it shall be set out in full.

> "For the purposes of this Title, the term 'Indian' means any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940, and those recognized now or in the future by the state in which they reside or who is a descendant in the first or second degree of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native or (4) is determined to be an Indian under regulations promulgated by the Commissioner after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term 'Indian'.[180]

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[179] *Morton v. Mancari*, supra.

[180] §1221h, see footnote 141, supra.

Implementation of Title IV
(Indian Education Act, Public Law 92-318)
By the Office of Education
And Administrative Impoundment

Although Title IV (the Indian Education Act) was enacted in June of 1972, appropriations were not determined until October 31, 1972.[181] Appropriations for Title IV were set at $18 million for all three sections.[182] The Senate Subcommittee on Appropriations appeared to feel that the $18 million appropriation was an amount needed solely for the second half of fiscal year 1973.

> "Committee allowance for the Indian Education Act is intended to provide funds sufficient only for the second half of this fiscal year [1973] to get these new programs started. It is expected that the Office of Education will act expeditiously in this regard."[183]

However, the Administration and thus, the OE, did not grasp the significance of the $18 million appropriation. To the contrary, on January 29, 1973, President Nixon proposed a rescission request of several OE appropriations for Title IV.[184] At the same time, the Senate initiated hearings of its Committee on Governmental Operations,

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[181] Supplemental Appropriations Act, 1973, Public Law 92-607, 86 Stat. 1501 (1972).

[182] Id.

[183] Sen. Rep. No. 92-1297, 92d Cong. 2d Sess. 25 (1972).

[184] The rescission request was contained in an appendix to the budget for FY 74, prepared by General Services Admin.

Subcommittee on Impoundment, in order to determine the legality and constitutionality of impoundment, and rescission of Congressionally appropriated funds. Since it looked as though the entire $18 million appropriation would lapse and revert back to the general budget, one of two lawsuits was filed in the D.C. District Court, the remedy sought was to require the President, as well as the OE, to comply with the intent of Congress.185/ Approximately two months later, a similar lawsuit was filed naming only the Commissioner of Education as defendant.186/ Not only was the President recommending rescission of the $18 million appropriation, the OE had not promulgated nor filed in the Federal Register any regulations applicable to Title IV. As a result of the first lawsuit, the President appointed the National Advisory Council on May 3, 1973, only five days prior to Court hearings in both lawsuits wherein both groups of plaintiffs were seeking preliminary injunctive relief to release the funds and implement Title IV.187/

185/Minnesota Chippewa Tribe v. Weinberger, C.A. No. 175-73 D.C. District Court (decided May 8, 1973).

186/Redman v. Ottina, C.A. No. 628-73, D.C. District Court, (decided May 8, 1973).

187/Although both lawsuits were proceeding on slightly different bases, motions for preliminary injunction were filed in each case on the same day; therefore, the District Court Judges for the D.C. District combined both lawsuits for purposes of hearing the motions for preliminary injunction. This is not unusual where similar lawsuits have been filed within one jurisdiction raising primarily the same legal issues.

Subsequent to the appointment of the National Indian Advisory Counsel, motions for preliminary injunction were heard before the Honorable June Green, United States District Judge for the D.C. District Court. After considering arguments on behalf of the federal Government and the plaintiffs, Judge Green ruled *inter alia* regulations must be published and for implementation of Title IV to commence; the OE was required to forthwith commence notifying Indian people of Title IV and to provide application forms for Title IV. The OE was ordered to diligently and in good faith process such applications received for programs under Title IV on the basis of the regulations.[188] Further, OE was ordered to approve and obligate or expend funds for all applications under Parts A, B, and C of Title IV, which met the requirements of Title IV.

Finally, Title IV was available to SEA's and LEA's and Indian Tribes, Indian organizations, and agencies to provide *special educational services* for Indian children and to address "the national tragedy".

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[188] *Id.*

Scope of Each Statute

How Indians Quality for Benefits

The BIA administers the Johnson-O'Malley Act. The general procedure whereby states receive Johnson-O'Malley funds is through submission of a state plan which is approved and funds go to the state which, in turn, distributes funds to school districts. In order for Indian children to qualify for benefits from Johnson-O'Malley funds, the children must be recognized by the BIA for BIA services. Johnson-O'Malley regulations set forth additional criteria, for example, children on or near large blocks of tax-exempt land, or within large concentrations of Indian people who place a substantial financial burden on the school district. The new Johnson-O'Malley regulations do not affect these criteria except in two areas, (1), the inclusion of pre-school children, (2), the eligibility of Indian people (Tribes and organizations) for contracting purposes. Thus, it now is likely that more Indian children will receive Johnson-O'Malley services, since Indian Tribes and organizations are eligible to contract for Johnson-O'Malley funds.

P.L. 874 adopts the same definition as does Johnson-O'Malley, i.e. those Indians who qualify for federal service. Like Johnson-O'Malley, this definition excludes many Indians not "federally recognized." Since P.L. 874 was originally designed to recompense states for certain federal activities which resulted in financial burdens to states, Congress should re-examine federal Indian policy to determine if "non-federally-recognized" Indians are, in fact, the first federal "impact" upon states.

Title I does not specifically define Indian children within the Act, or in the regulations. Only indirectly do Indian children fall within the category of children who, theoretically, are the ultimate beneficiaries of Title I expenditures. Indian children whose parents do not earn more than a "low income factor," if counted might qualify an LEA for eligibility and therefore these children might ultimately participate in programs in a "project area." Indian children might also benefit from Title I programming if they reside within highly concentrated proverty areas. Indian children whose parents are migratory agricultural workers may also qualify. Finally, those children who receive their education from a state because they have been declared neglected or delinquent may qualify.

Title IV includes the most comprehensive definition of Indian children:

(1) "is a member of a tribe, band, or other organized group of Indians, including those Tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendant, in the first or second degree, of any such member , or

(2) is considered by the Secretary of the Interior to be an Indian for any purpose, or,

(3) is an Eskimo or Aleut or other Alaska Native, or,

(4) is determined to be Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term 'Indian.'"

Selection Criteria-Indian Eligibility - Johnson-o'Malley was designed to aid states in the provision of many services. However, the Secretary of Interior has discretion in determining which states are entitled to funds to educate Indian children. As mentioned in the preceding section (definition), not all Indians are eligible for participation. Furthermore, some state plans exclude Indians who would ordinarily qualify. These Indian children live in urban areas and are usually excluded by the terms and conditions of state plans. Finally, expenditure of appropriations might affect Indian eligibility i.e., do school districts use Johnson-O'Malley funds solely for Indian students, or do they use funds for the benefit of all students, including non-Indian students?

P.L. 874 Indian eligibility is usually based on the category of child as defined by the Act. If Indian children reside on reservation or restricted lands with a parent or legal guardian employed on federal land (or project), he or she would qualify the LEA to a full entitlement for that child. However, if the child resides on federally restricted Indian land and the parent or legal guardian is not employed, the child entitles the LEA to one-half the preceding child's entitlement. The entitlement is computed on the basis of a formula which may be modified upward by the Commissioner.

As mentioned in the preceding section, Title I funds are for educationally deprived children of all races. The rationale is that children with backgrounds of poverty are more likely to be in need of supplemental programs to compensate for the effects of poverty. Children who qualify for Title I funds are selected by LEA's who in turn must obtain approval by the SEA. If Indian children are selected as educationally deprived children, they are eligible to participate in Title I programs.

In Title IV, Part A, the Commissioner of O.E. is required to carry out a program to provide funds to LEAs to develop and implement programs for Indian children to meet their special needs. Using the broad definition of Indian, the Commissioner is directed to provide Title IV, Part A funds to the LEA on the basis of a formula set forth in the Act. Part B directs the Commissioner to carry out a discretionary grant program to provide pilot and demonstration projects and in-service training projects, as well as a vast array of other projects, aimed at meeting the special needs of Indian children.

Funding Criteria

The manner in which federal funds reach recipients varies from statute to statute.

Johnson-O'Malley funds are determined on the basis of a contract (state plan) whereby the appropriate state education official negotiates with the Area Director for the BIA to determine the amount of funds to be received.

Theoretically, the sum is based upon the amount necessary for the state to maintain adequate schools. Where states also receive P. L. 874 funds, Johnson-O'Malley funds were restricted to meeting needs of an extraordinary or exceptional nature. However, since PACs possess veto power over projects under the new Johnson-O'Malley regulations, the process is likely to change. What direction the change will take is quite uncertain at this time, but it is hoped the change will be beneficial with respect to local control by Indian people.

P. L. 874 funds reach LEAs on the basis of entitlement formula grants (subject to available appropriations and exclusive of §6). However, the Commissioner is authorized to increase the entitlement in the event he deems factors are present which warrant such increase.

Title I authorizes basic (entitlement) grants to LEAs and SEAs which provide educational services for delinquent or neglected children. In addition, two other forms of grants are authorized. First, incentive grants, computed on the basis of a formula (the amount by which a state effort-index exceeds the national effort-index subject to a 15 percent ceiling of the state's total entitlement under Title I) are authorized. Second, special grants are authorized for areas with the highest concentrations of low-income families. These special grants are also entitlement formula grants. However, the SEA is authorized to determine if the LEA has an "urgent need" and if the SEA determination if affirmative, such LEA may also receive funds. In other words, the SEA has discretionary power to determine if an "urgent need" is present.

Title IV Part A funds are also entitlement formula grants. Parts B and C are discretionary grants. The Commissioner has the discretion, subject to the mandate of Congress, to enter into a program of offering these grants.

Enforcement Criteria for Each Statute

Compliance

Enforcement criteria provide the manner or method for determining whether or not federal funds are being used for the purpose(s) set forth in the application of an SEA or LEA grantee. Separate and distinct from procedures designed to identify misappropriation or compliance (audit, evaluations, etc.) enforcement criteria are the means whereby misappropriation of federal funds can be stopped and remedial measures instituted. Two additional considerations should be examined, in conjunction with these criteria, to understand their effectiveness. The first such consideration is a determination of the class or body entitled to exercise enforcement authority. The second is a determination of the scope or extent to which such authority may be exercised. In the event enforcement is not vested in a specific class or body, or enforcement authority does not authorize adequate remedies, the enforcement procedure cannot provide adequate relief. Any reference to such inadequate enforcement criteria would be nothing more than window-dressing.

Administrative Rules and Regulations

All three statutes administered and implemented by the Office of Education (P.L. 874, Title I, and Title IV) are explicitly included in Title VI of the Civil Rights Act of 1964.[189] This title provides:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."[190]

Since the three statutes administered and implemented by the Office of Education are separate titles of P.L. 874, rules and regulations as set forth in the Code of Federal Regulations are available to any citizen who believes his child's civil rights have been violated.[191] Johnson-O'Malley was not specifically included by the provisions of Title VI of the 1964 Civil Rights Act. The new Johnson-O'Malley regulations have provisions similar to those of the regulations for Title VI of the Civil Rights Act, which also give Indian people a complaint procedure if they think state or local school officials are discriminating against their children.

Title I is the only statute of the four under study (Johnson-O'Malley, P.L. 874, Title I, Title IV) which authorizes the Commissioner to withhold federal funds from SEAs and/or LEA's in the event of non-compliance (enforcement criteria).[192] If the Commissioner determines that an SEA has failed to "comply substantially" with any assurance required by Title I he must, under the statutory language, stop payment. The statutory language has been interpreted by the Commissioner in the regulations at 45 CFR §116.52. The language of the regulations weakens the statutory language, since under sub-section (b) of the regulations the Commissioner has authority to "attempt to resolve any apparent differences between him and the state education agency regarding the interpretation or application of the provisions of Title I of the act."[193]

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[189] July 2, 1964, P.L. 88-352, Title VI, §601, 78 Stat. 252, 42 U.S.C. §2000d, §2000d5.

[190] Id.

[191] 45 CFR 80.1 et seq.

[192] Title I, See ft. note 126, 20 USC 241j.

The legislative history of Title IV reflects Congressional concern that complaint procedures be promulgated by the Commissioner:[194] "In administering this Title, the Office of Education should establish a responsive complaint mechanism which would permit complaints or alleged violations of law or regulations to be brought to the highest appropriate level for consideration."[195] However, the Office of Education has not to date promulgated any rules or regulations with respect to compliance procedures for Title IV.

Judicial Interpretation

Enforcement criteria are available through the courts. Although judicial enforcement is an effective means for stopping misappropriation of funds and implementing remedial measures, it does have inherent weaknesses. Delays are the rule rather than the exception. Adequate preparation for any litigation involving such complex matters as compliance with federal education statutes and discriminatory practices requires a substantial amount of time. In addition, litigation itself may and often does entail additional delays. In the event a litigant is successful at the trial level, the trial court's finding is subject to appellate review. Unless the litigants can agree upon a settlement prior to or during the trial phase of litigation, additional time will be consumed by the appeal process.

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[193] 45 CFR §116.52(b)

[194] S.Rep. No. 92-384, 92d Cong. 1st Sess. 21 (1971).

[195] Id.

Even if there is a favorable ruling by an appellate court, its decision is not necessarily binding upon other circuits within the federal court system. Only in the event that the U.S. Supreme Court assumes jurisdiction will a decision be binding nationwide. Often a circuit court may look to the findings of another circuit court only as secondary authority (not directly in point either factually or application of Statutes) and, therefore, not necessarily binding upon the circuit interpreting the other decision. This is true primarily because courts are reluctant to lay down broad interpretations which would have general application. Courts usually confine their findings strictly to the particular factual cases before them. The reluctance of courts to interpret statutes generally is especially evident when they are interpreting complex statutes (such as the four statutes under study here). Courts often seek to define the legislative intent of a statute in order to decide a particular controversy, but they are nonetheless usually inclined to leave general substantive remedial measures to the Congress or legislatures. In 1973, the Supreme Court declared:[196]

> "Education, perhaps even more than Welfare assistance, presents a myriad of 'intractable economic, social and, even philosophical problems'. . . and that, within the limits of rationality the legislatures' efforts to tackle the problem should be entitled to respect." (emphasis added)[197]

The court's attitude is substantially if not totally correct, since legislatures are much better equipped than courts to examine the problems and design solutions.

Although courts are not the governmental bodies most effective in providing remedies for educational deficiencies, they must sometimes be called upon to determine SEA and LEA compliance with existing statutes when administrative remedies have been exhausted or when the courts find that no adequate administrative remedy is available.

In Natonabah v. Board of Education[198] (hereinafter referred to as Natonabah) two major issues were raised. Plaintiffs (parents of Navajo Indian children attending schools within the Gallup-McKinley County School District) brought action against the federal government, the State of New Mexico and local school officials, alleging, inter alia, discrimination against their children in violation of the Civil Rights Act of 1870[199] and Title VI of the 1964 Civil Rights Act,[200] and misappropriation of supplemental federal funds under Title I and Johnson-O'Malley. However, prior to adjudication at the trial court level, the federal government was allowed to withdraw as a party defendant and the United States thereafter filed a brief as amicus curiae on the issue of discrimination. The trial court was asked to examine discrimination against Indian students and misappropriation of federal supplemental funds by both state and local school officials. After an extensive analysis of the educational functions of the state of New Mexico and the Gallup-McKinley school district, the trial court found that Navajo Indian children had been subjected to a clear pattern of discrimination by the School District and that a diversion of Title I and Johnson-O'Malley funds had occurred. The trial court further found that these funds had been expended for purposes not intended under Title I or Johnson-O'Malley. The court ordered the School District to submit the court a comprehensive plan for remedying the disparities revealed to the court in evidence presented by plaintiff.

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[196] San Antonio Independent School Dist. v. Rodriquez, 93 S. Ct. 1278(1973).

[197] Id. 33

[198] 355 Fed. Supp. 716(70th Cir. 1973)

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[199] Act, May 31, 1870, c.114, §16, Stat. 144, 42U.S.C. 1981-1983.

[200] 42 U.S.C. §2000d-1

The court examined P. L. 874 and its relationship to state aid and other federal educational statutes and concluded: "There is no Federal or State provision that the state agencies must monitor or review the use of these funds by local district."[201] The Court examined the legislative intent of Title I and Johnson-O'Malley and the expenditure of these funds by both state and School District. The Court went to substantial lengths to examine the state's education finance scheme, and only after extensive analysis concluded that use of Title I and Johnson-O'Malley funds constituted supplanting rather than supplemental expenditures by the school district. The Court further held that the School District expenditure of Johnson-O'Malley funds could not be included in Title I comparability assurances required under Title I and regulations promulgated pursuant thereto.[202] Natonabah therefore recognized judicial review of alleged discriminatory practices by SEAs and LEAs toward Indian children. It also recognized judicial review of state and local expenditures of Title I and Johnson-O'Malley and their supplemental nature.

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[201] Id at 725. See, also, Carlsbad Union School Dist. of San Diego County v. Rafferty, 429 F.2d 337 (9th Cir. 1970).

[202] The Federal Government assured the Court that remedial regulations had been promulgated to prevent LEAs from including Johnson-O'Malley expenditures for purposes of determining comparability under Title I. See, 45 CFR 116.26(a) and, 45 CFR 116.45.

In an Eighth Circuit opinion the court allowed parents of children attending non-public schools to challenge Title I expenditures by the State of Missouri under the Fourteenth Amendment equal protection clause.[203] In Barrera the court held that parents of educationally deprived children attending non-public schools were entitled to allocation of funds for a program of special services comparable in quality, scope and opportunity to those provided in public schools. However, the Court did not require equal expenditure of Title I funds.

Both Natonabah and Barrera stand for the proposition that parents of children entitled to federal educational funds can seek redress through the courts. However, each case required approximately two years for appeal. The length of time required to prepare the case for trial is not known. Therefore, although judicial enforcement is available, the delay constitutes a substantial barrier to immediate relief.

The ultimate solution to the complex problem of misappropriation of federal education funds is to have responsive and thorough complaint procedures implemented by the Office of Education. The Office of Education is authorized to provide these procedures by promulgating rules and regulations for Title I and Title IV. Furthermore, solution of the problem of misappropriation would be greatly facilitated if the Office of Education would use Congressional intent as its guide in implementing the statutes. The veto power of PACs under the new Johnson-O'Malley regulations should provide adequate enforcement criteria for Johnson-O'Malley expenditures. However, PACs must have adequate understanding of supplemental programs to ensure their veto power is properly exercised.

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[203] Barrera v. Wheeler, 475 F.2nd 1338 (8th Cir. 1973).

Interaction in the Implementation of the Four Statutes

Johnson-O'Malley and P. L. 874 apply a restrictive definition of Indian compared to that of Title IV. An Indian, for purposes of Johnson-O'Malley and P. L. 874, must have (subject to certification of the BIA) 1/4 or more quantum of Indian blood. In addition, in P. L. 874 Indian blood for purpose of the definition is Indian blood of a federally recognized Tribe, whereas, the Title IV definition includes a) those Indian children who could qualify for the BIA definition otherwise but cannot obtain BIA certification, b) those Indian children who are members of non-federally recognized Tribes, c) those Indian children who belong to two or more Tribes who cannot prove sufficient quantum of blood for one Tribe, d) those Indian children who have been adopted by white parents, and e) those Indian children who do not possess a sufficient quantum of Indian blood, i.e., less than 1/4. While this list is not exhaustive of all of the possibilities, it is sufficient to illustrate the disparity between the two definitions.

If Congress wants to deal effectively with Indian problems, a reconsideration of the definition of Indian for all federal education statutes should be given high priority.

In enacting Title I and Title IV (and to some extent P. L. 874) Congress expressed concern as to the inability and/or failure of state and local educational agencies to provide adequate educational services to many children attending state elementary and secondary schools. Recognizing the problems which states were encountering in providing educational services for elementary and secondary school aged children, Congress declared a policy of recognizing special problems and resulting special needs for "educationally deprived" and "special needs of Indian children." In order to implement these policies, federal funds were made available to state and local educational agencies to meet these special needs. Each state is to receive funds on the basis of formulas provided within each statute and the ultimate amount paid to each state or local educational agency is to be determined by the amount of appropriation authorized for each statute by Congress.

Since Congress has determined that special needs exist and that federal funds should be used in a supplemental manner to aid state and local educational agencies, it would seem only logical that Congress should also define, at a minimum, standards of educational service to be provided by state and local educational agencies and educational achievement to be reached by the educationally deprived students.

Minimum standards of educational service would not and should not be used to dictate substantive educational programs and philosophies to state and local educational agencies. They would be used to provide a yardstick for measuring the success or failure of expenditures of federal funds. So long as federal funds are appropriated to provide supplemental programs, their value cannot be measured unless an ultimate goal is perceived.

Neither Title I nor Title IV discuss basic educational goals. They are designed, presumably, to supplement the basic educational services of local education agencies. The logical method of determining federal educational expenditures would be to fund on the basis of the results obtained, bearing in mind the ultimate objectives or minimum goals of basic education. Unless financial investment in educational services is governed by a goal, it is difficult, if not impossible, to determine when, if ever, the ultimate goal has been achieved.

Comparability is a method for requiring SEAs to ensure that a certain minimum expenditure of state and local funds is appropriated and used by schools which receive Title I funds. Comparability, although determined by the SEA, does not apply on a state-wide basis. The regulations provide that comparability applies on a district-wide basis if a school serving a project area within the district is a Title I recipient. If a school district includes a Title I recipient school serving a project area, the Title I recipient must expend state and local funds on a basis comparable to all other schools within the district (a staff-to-student ratio determined on the average sums for all schools within the district). The Title I recipient school serving a project area must also expend a comparable amount of state and local funds for pupils attending the Title I recipient school (also computed on the average sums of all schools within the district). Each computation must fall within an acceptable range of the average district-wide expenditure.

If the Title I recipient school(s) serving a project area is not comparable as determined above, the LEA may meet comparability if it can prove state and local expenditures for "textbooks, library resources, and other instructional materials per child" in each school servicing a project area are not less than 95 percent of such expenditure per child in all other schools in the district.

LEAs must provide information to SEAs to determine comparability and LEA must assure SEAs that such comparability shall continue so long as Title I funds are received. If comparability is not maintained, the LEA is not allowed Title I payments.

Comparability does not require a SEA to distribute state and local expenditures equitably throughout the state. Nor does it require LEAs to expend equitably all state and local revenues appropriated and expended within the LEA, since the language of the regulations distinguishes between LEAs and school districts, providing that a school district may exist within an LEA. Because 45 CFR 116.26 (c)(3) permits comparability if an LEA can provide a minimum amount of textbooks and school materials, the comparability formula is therefore not a federal requirement for equalization of state and local revenues. Even after comparability is achieved, vast discrepancies may still remain within school districts, LEAs and SEAs.

Title I recognizes discrepancies in availability and expenditure of state and local funds and services provided.

within school districts, LEAs and SEAs through the requirement of a comparability formula. States also recognize such discrepancies, since all states have equalization statutes in one form or another. If Congress and the states recognize discrepancies in state and local expenditures of funds and services, and the Supreme Court (Brown) declares that once a state provides educational opportunities to all children, the opportunities must be provided equally to all children, then the natural remedy for these discrepancies is state-wide equalization of all state and local revenues. Only if Congress mandates state-wide equalization of state and local educational revenues can the concept of comparability be realized.

The Supreme Court in Rodriguez recognized that it was not the proper governmental body to legislate such a change, but that any remedy of such complexity should be reserved for a legislative body. Comparability and state equalization statutes are tacit admissions by Congress and state legislatures that inequities exist not only from state to state and LEA to LEA, but also from school district to school district.

Congress should therefore examine the problems of inequitable state and local education expenditures and enact legislation to require, at a minimum, equal state and local educational expenditures on a state-wide basis. Such a solution will not be attained without difficulty and powerful opposition. However, only Congress can correct the inequities of school finance.

In order for any of the four statutes to meet the needs recognized by Congress, the administrative agencies interpreting and implementing the statutes must understand and fulfill the desires and wishes of Congress. Unless this process occurs within the Office of Education and BIA, the statutes will do little to provide solutions. Not only should Johnson-O'Malley, Title I and Title IV programs complement state educational systems, but these three federal statutes should, to the greatest possible extent, interact with and complement one another at the federal level. Only in this manner will the intent of Congress be realized. Anything less would create confusion with state educational systems and duplication of expenditures and services at the federal level. Therefore, administrative interpretation and implementation is the key to achieving the Congressional solutions proposed by the statutes.

State governments and SEAs also have mutual responsibilities in implementing Congressional intent. Failure at the federal administrative level leads to confusion and failure of states and SEAs to understand and implement the intent of Congress.

The BIA, unfortunately, has not interpreted Johnson-O'Malley as broadly as the Act allows. The new regulations were promulgated as a result of substantial pressure from many Indian educational organizations, and only after great efforts and expenditures by the Indian organizations and others interested in a new direction for Johnson-O'Malley.

Notwithstanding promulgation of new Johnson-O'Malley regulations, much could and should be done to expand the scope of Johnson-O'Malley to provide new avenues for Indian people.

The Office of Education could also expand the scope of P. L. 874 by emphasizing the alternative method of determining comparable districts [see, 45 CFR 115.20(b)] since under the alternative method LEA entitlement may be substantially higher if computed on this basis.

The Office of Education should emphasize that new instructional designs and techniques which are successful should be adopted by LEAs and SEAs on a state-wide basis and applied to their basic educational programs. Although comparability requirements for Title I have inherent weaknesses, they should be monitored to the maximum extent to ensure that state and local revenues are expended in project areas to the maximum extent required by law. The Office of Education appears to have weakened the authority and requirement of the Commissioner by the inclusion of 45 CFR 116.52 (b), which gives the Commissioner authority to resolve controversies and/or disagreements with SEAs without providing an adequate maximum timetable whereby funds should be withheld. The effect of this regulation allows SEAs and LEAs an open-ended disagreement period, meaning that SEAs and LEAs could conceivably fail to comply with minimum assurances required under Title I. Ultimately, students entitled to the benefits of Title I would suffer from possible misappropriation of funds or discrepancies. Although such a negotiation period might be valuable, it should be restricted by a reasonable timetable within which controversies should be resolved or funds withheld.

The Office of Education should amend the regulations for Title IV Part A to explicitly authorize PACs to consider and consult with recipient LEAs in determining priorities for expenditures of P. L. 874 funds in addition to Title IV, Part A funds. Congress explicitly intended this authority to be vested in PACs and the regulations do not provide explicit recognition of this PAC power. Furthermore, the Commissioner should promulgate an adequate complaint procedure in the Federal Register to insure that complaints or allegations of LEA misappropriation and/or misuse of services provided by Title IV Part A funds shall be considered by the Office of Education officials and that remedial measures are implemented. Not only would such complaint procedures prevent duplication of services, but they would insure that Congressional intent is implemented to meet special needs of Indian children.

Statutory requirement of Johnson-O'Malley, when used in exceptional or extraordinary circumstances to provide supplemental services, Title I and Title IV Part A are designed to provide federal funds to meet specially recognized needs of certain categories of students. Programs under these statutes are required to address special needs and supplement basic educational programs of SEAs and LEAs. Since these programs are to supplement basic educational programs, it is conceivable that they may not adequately interact with and complement basic educational programs. This is not to say that this type of situation occurs;

the possibility of the occurrence of such a situation is merely pointed out. The responsibility for preventing such situations should be recognized by the Office of Education and/or BIA and SEAs. In addition, both federal agencies and SEAs should make every effort to emphasize to LEAs and school districts that supplemental projects and programs should complement basic educational programs and services provided to all students.

Congress has explicitly recognized state financial system inequities. Johnson-O'Malley, P. L. 874, Title I and Title IV all include provisions which require the state to provide minimum state and local revenues to LEA recipients of federal funds. Congress has explicitly required SEAs and LEAs to provide adequate assurances that federal funds from the four statutes shall be expended for those children who require these services. Congress has further required SEAs and LEAs to receive federal funds on an equitable basis. However, Congress has not required equitable expenditures of state and local revenues throughout the states. Nor has Congress required equitable expenditures of state and local revenues on a state-wide basis. While Congress has required statutory mechanisms to insure at a minimum that state and local revenues are allocated to all districts receiving federal funds, such provisions do not require equitable expenditures of state and local revenues [see, VII (A)(3) discussion, infra]. Vast discrepancies may still exist even after all current standards have been met.

Congress should therefore examine state educational finance statutes to determine whether or not they provide equitable expenditures of state and local funds.

The logical and equitable conclusion should and could only be resolved by federal statute(s) requiring nation-wide or, at a minimum, state-wide equalization of all states and local revenues.

Legal Theories with Respect to Education

At Common Law, it was the duty of the parent to provide education for his/her children.[204] The education was to be suitable to their station in life.[205] Although the Common Law recognized a duty owed by the parent to the child, such a duty was not enforceable.

Basic Education

This sub-topic is divided into basic education and supplemental education, although the Courts have not provided such a distinction. (This will be discussed further in the next sub-topic.) All states today have the responsibility to provide children residing within the state an education. This has been accomplished through state constitutional provisions as well as statutory provision.[206] Generally, however, state constitutions require state legislatures "to provide a general and uniform system of common schools, where tuition shall be without charge and equally open to all."[207]

The Supreme Court has ruled emphatically that "such an opportunity (education), where the state has undertaken to provide it, is a right which must be made available to all on equal terms."[208] Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, color or national origin for any program or activity which recieves federal assistance.[209] The Commissioner of Education is required by Title VI of the Civil Rights Act of 1964 to prohibit payment when such discrimination exists.[210] Some courts have required States to admit Indian children living on Indian reservations notwithstanding the presence of federal Indian schools.[211] Indian children living in areas other than on reservations would have the same right to public education in state schools as all other students within the State.

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[204] 47 AmJur Schools §6.

[205] Id.

[206] Id.

[207] Id.

In defining education, legal scholars tend to express education inclusively rather than exclusively.

> "The term is a broad and comprehensive one, has a variable and indefinite meaning, includes all knowledge if we take it in its full and not its legal or popular sense; and, depending on the context and circumstances of its use in the particular case, has been defined as meaning the bringing up, physically, or mentally, of a child, or the preparation of a child by some due course, training, for a professional or business life, or other calling; cultivation of the mind, feelings, and manners; the general and formal work for schooling, especially in an institution of learning; the imparting or acquisition of knowledge; mental and moral training; the process

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[208] Brown v . Board of Educ. 347 US 483, 493 (1954)

[209] July 2, 1964, P. L. 88-352, Title VI, §601, 78 Stat. 252, 42 U.S.C. §2000d.

[210] 42 U.S.C. §2000d-5.

[211] Grant v . Michael, 23 P 2d, 266 (1933); Piper v . Big Pine School District, 193 Calif. 664, 226 P 926; Crawford v . School Bd. 68 Oregon 388, 137 P217 (1913).

> of developing and training the powers and capabilities of human beings." 212/

As can be seen from the foregoing quote, judicial scholars have not contemplated a distinction between basic education and supplemental or compensatory education.

Supplemental/Compensatory Education

As can be seen from the foregoing section, courts have not attempted to define or differentiate between basic education and supplemental or compensatory education. However, in construing federal education statutes, the court determined Congressional intent of statutes and applied the Congressional definition of education to the facts at issue before them.[213] Since public school services may vary from state to state and also from school district to school district within a state, a court must usually first understand the public school programs and services provided to children in order to distinguish between supplemental or compensatory educational programs and basic educational programs and services.

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[212] 28 CJS, Education at 832, 3.

[213] Natonabah v. Bd. of Educ. of Gallup-McKinley County School Dist. D,C,N,M,. 355 F.Supp 716 (1973).: Barrera v. Wheeler, 475 F. 2d 1338 (1973).

School Financing

In 1973, the United States Supreme Court dropped a bombshell when it held that a Texas elementary and secondary education sytem which relied substantially on land taxes within each district to finance education was not violative of the equal protection clause of the Fourteenth Amendment to the Constitution. In deciding the case, San Antonio School v. Rodriguez, 411U.S. 1 (1973), the court held that the Texas finance system must be found to operate to the disadvantage of a suspect class or impinge upon a fundamental right explicitly and implicitly protected by the Constitution before the court would subject the Texas system to strict judicial scrutiny. The court concluded that the Texas system did not discriminate against a definable class (poor people) and found, although education is important in today's society, it is neither an explicit nor implicit right guaranteed by the Constitution. Therefore, the court concluded strict scrutiny would not be applied. The court went on to hold that the Texas finance system would not be a violation of the equal protection clause of the Fourteenth Amendment to the Constitution if the state system bore some rational relationship to legitimate state purposes. The court concluded that it was extremely reluctant to enter areas of state fiscal policies which were best left to state legislators and noted also it was reluctant to enter an area in which the court lacked both competence and authority. Noting past Texas history, the court concluded that the state was making an attempt to provide an adequate education for all children living within Texas and that the financial system bore a rational basis to this end.

The Supreme Court recognized that substantial disparities existed within the Texas financial system. All state' elementary and secondary education finance systems are comparable to the Texas system. Therefore, probably most, if not all, state elementary and secondary financial systems have vast disparities of state funds from district to district and possibly from school to school within a district.

The majority opinion (a 5-4 decision), however, concluded that its decision should not be interpreted "as placing its imprimatur on the status quo." (Id at 58.) The court further stated, "The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. . . .But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them."214/

The court's decision reversed a District Court's ruling that the Texas system discriminated against people on the basis of income in the manner in which education was provided. The decision also reversed a trend by lower courts which had

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214/ President's Commission on School Finance, Schools, People and Money at 9 (1972).

found similar state financial systems violative of equal protection.[215] *Serrano v. Priest*, (96 Cal. Rptr. 601, 487 P.2d 1241, 5 Cal.3d 584 (1971)), was a case reflective of this trend and, until the *Rodriguez* decision, was the leading case dealing with state education financial systems. The primary distinction between *Serrano* and other decisions from *Rodriguez* was based on a judicial interpretation of education. *Serrano, et al.*, held that education was a fundamental interest requiring the strict scrutiny test, *i.e.* the state bears the burden of establishing not only that it has a compelling interest that justifies the law but also must prove that the distinctions drawn by the law are necessary to further its purpose. In *Rodriguez*, Texas admitted that it could not meet the requirements of the strict scrutiny.

Even though the Supreme Court has failed to cloak education with Constitutional or fundamental interest protection, it has recognized inadequacies and inequities in current state education finance systems and re-emphasized the legislative role to provide ultimate solutions.

Local Control

Local control can be defined, as a situation in which parents actively participate with local school officials to determine educational goals and the design and implementation of methods by which to achieve those goals. The U.S. Supreme Court has referred to local control as "...[d]irect control over the decisions vitally affecting the education of one's children... a need that is strongly felt in our society..."[216/] The Court further emphasized the significance of local control in today's society. "...Local control is not only vital to continuing public support of the schools, but it is of overriding importance from an educational standpoint as well."[217/] Local control is not only important for schools and society in general, but is absolutely essential in order to survive.

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[215] *Serrano v. Priest*, 96 Cal. Prtr. 601, 487 P.2d 1241, 5 Cal.3d 584 (1971), *Van Dusartz v. Hatfield*, 334 F.Supp. 870 (1971); *Milliken v. Green*, 389 Mich. 1, 203 N.W.2d 457 (1972); *Robinson v. Cahill*, 118 N.J. S.Ct. 223, 287, A.2d 187, Supp. Op. 119 N.J. S.Ct. 40, 303 A.2d 273 (1973).

In a recent law review article,[218/] a persuasive argument for local Indian control was propounded by Michael P. Gross. Gross' article is a legal argument for Indian control of the educational process for their children. The article is primarily concerned with Indian people living "on or near reservations." He argues that where Brown v. Board of Education[219/] mandated equal treatment for Blacks in State schools (Blacks were being discriminated against because they were forcibly separated and held apart from white students, Indian children

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[216/] Wright v. City of Emporia, 407 U.S. 451 (1972); United States v. Scotland Neck City Bd. of Educ., 407 U.S. 484 (1972).

[217/] Id at 477-78.

[218/] Gross, Indian Control For Quality Indian Education, 49 N.Dak. L. Rev. 237 (1973 [hereinafter cited as Gross' Argicle].

[219/] 347 U.S. 483 (1954).

(on or near reservations) are denied equal protection because they have been subjected to "coercive assimilation" (a form of racial discrimination whereby Indian people have been forcibly included (integrated) into white society).

In support of his theory, Gross relies upon three arguments. First, he argues that Indian people have been denied equal protection under the Fourteenth Amendment because of coercive assimilation policies. In addition, Indian people have been effectively denied any political voice due, in part, to coercive assimilation as well as other white society policies. Second, he argues that states should provide methods for ensuring religious and other First Amendment rights of parents when no other means exist to protect these rights; First Amendment rights include parents' rights to raise their children. Finally, both preceding arguments are premised upon the unique legal status of Indians (weak and defenseless people who are wards of the federal government).[220]

Gross' article presents sound legal propositions. The argument's basic weakness, however, lies in its restrictive nature. He appears to limit his argument solely to those Indians recognized by BIA. Many Indian people today do not fall within this category. Many Indian people no longer live "on or near reservations." Past and present federal policies to assimulate (or coercively assimilate) Indian people into white society, at least in part, are responsible. Many Indian people are not federally recognized Indians because the

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[220] Gross' Article, 261, see ft. note 218, supra.

Federal Termination Policy was implemented. Many Indian people no longer qualify for BIA services because they personify the objective of federal policy. These Indian people reside within white society and, in some instances, large urban areas. If Gross' article could be expanded (and there appears no reason why it could not) to include all Indians, it could stand as the foundation for meaningful Indian educational reform, a foundation long overdue.

SECTION IV: FINDINGS AND DISCUSSION

B. MANAGEMENT STUDY

Summary of Conclusions and Recommendations

The report of the management study team is presented here and in Appendix II as submitted by the subcontractor except for changes in format and organization and elimination of general introductory material. It should be kept in mind that the conclusions and recommendations do not take into account other elements of the study.

First of all, general conclusions regarding management capabilities are presented followed by recommendations based on these conclusions for each of four administrative levels: USOE, BIA, SEA, LEA. Then general conclusions based on the total sample, followed by another series of recommendations, are given for Title I, Title IV, P. L. 874, Johnson-O'Malley and the SEA.

Conclusions - USOE

1. The USOE has not provided effective leadership to SEAs and LEAs.
2. The USOE has not monitored SEAs and LEAs adequately to determine that effective use is made of federal funds for education.
3. The USOE has been consistently vague in publishing guidelines and regulations. As a result, too much has been left to the interpretation of personnel at the SEA and LEA.

4. The language of the regulations and guidelines published by USOE is often difficult to understand for many SEA and LEA personnel.
5. The operation of regional office systems has been disastrous. There has been no evidence that shows more than token attempts to provide adequate training and/or technical assistance to SEAs and LEAs.
6. No coordination exists at the USOE level in the planning, implementation or evaluation of federally funded programs. No national plan for federally funded programs exists.
7. The USOE does not require that operational plans as well as program plans be developed by the SEAs and submitted to USOE for approval.
8. No communication/coordination exists between the BIA and USOE regarding educational programs.
9. Present funding cycles under USOE/BIA control do not provide SEAs and LEAs with enough time to plan properly for educational programs.

Recommendations - USOE

1. The USOE should take a stronger coordinating role in the interpretation and implementation of legislation by developing and disseminating regulations and guidelines for each of the various funding sources under its control.

2. The USOE should require an operational plan for both Title I and P. L. 874 from the regional offices. This would provide the regional offices with the necessary impetus to monitor SEAs and to provide them with training and technical assistance.
3. The USOE should coordinate its educational programs for Indian children with those offered by the BIA.
4. The USOE should revise present funding cycles and fund programs to the SEAs at least one year in advance. This would give the SEAs and LEAs an opportunity to adequately plan programs.

Conclusions - BIA

1. The BIA has been generally ineffective in providing leadership to SEAs and LEAs.
2. No coordination or communication exists between USOE and BIA regarding educational programs. Because of this, the BIA is not getting the benefit of the educational experience of the USOE staff.
3. The BIA does not monitor the SEAs, LEAs and Tribal organizations well enough to ensure that earmarked federal monies are being used solely to service the education needs of Indian children.
4. The BIA does not require and approve detailed operational education plans outlining the specific activities and objectives of the SEAs, LEAs and/or

Tribal organizations.

5. The BIA does not provide for planning, implementing or evaluating federal educational programs under its control.
6. BIA area offices are understaffed; they cannot provide adequate training or technical assistance to SEAs, LEAs and Tribal organizations.
7. The BIA requires no statistical reporting from SEAs, LEAs and Tribal organizations. This results in a lack of precise, current data on Indian education.
8. There was no evidence to show that the National Advisory Council on Indian Education (NACIE) offers any input to, or has any involvement in, the planning of educational programs for Indian children.

Recommendations - BIA

1. The BIA should coordinate educational programs under its control with programs operated by USOE for Indian children.
2. The BIA should develop an operational plan for the BIA area offices and provide these areas offices with the staff needed for adequate monitoring of BIA-operated educational programs.
3. The BIA should require operational plans for the use of educational funds from LEAs, SEAs and Tribal organizations to provide a basis for

monitoring these agencies.

4. The BIA should compile up-to-date statistical reports based on data from LEAs and Tribal organizations concerning the types of sevices offered to Indian children. This would give the BIA the information necessary to prevent duplication of services.
5. The BIA should solicit regular input from NACIE and other Indian groups concerned with education as it develops educational programs for Indian children.

Conclusions - SEA

1. SEAs are provided funds under ESEA Title V - 505, which can be utilized to develop a state plan. However, many SEAs have failed to do so, and none seems to have operational plans.
2. SEAs are provided funds under ESEA Title III to perform state-wide needs assessments. Many of the sample states reported that such assessments had not been performed or that the results of those performed were not valid.
3. Even though the SEAs are responsible for the education of the children in the state, many SEAs hesitate to exercise this authority over the LEAs. As a result, SEAs don't oversee all the educational programs in their states.
4. No dissemination plans exist in many of the

states sampled.

5. In many of the states sampled, there is no evaluation plan.
6. Very little coordination of federal programs exists at the SEA level.
7. There are no plans for coordination between the SEAs and LEAs. Therefore, most interaction that occurs between SEAs and the LEAs is crisis-oriented and initiated by the LEAs.
8. Monitoring by the SEAs generally seems too haphazard.

Recommendations - SEA

1. USOE should require SEAs to develop and submit state educational plans in order to ensure coordination of programs and prevent duplication of services.
2. USOE should require SEAs to develop and submit operational plans consistent with their state plans.
3. As part of its monitoring activities (which should include periodic site visits to each SEA), the USOE should verify that valid state-wide needs assessments are being performed and the results being utilized.

Conclusions - LEA

1. Since no consistent regulations and guidelines

exist for federally funded programs and since in many states there are not even state plans for program implementation, dissemination or evaluation, LEAs are generally left on their own in conducting federally funded educational programs.

2. No coordinated plan for interaction exists between SEAs and LEAs. Much of their interaction is crisis-prompted and initiated by the LEAs.
3. LEAs do not provide the training, support and information necessary for the development and maintenance of PACs.

Recommendations - LEA

1. LEAs should provide adequate support to PACs. A concerted training effort must be implemented to develop the effectiveness of these councils.
2. Greater emphasis should be placed upon coordination of federal programs at the LEA level.
3. Greater emphasis should be placed upon LEA implementation of evaluations of federal programs.
4. LEAs should provide adequate training for personnel to their target schools.

Conclusions - Title I, ESEA

1. Serious problems requiring immediate attention exist in all Title I programs. These problems fall in the areas of program planning, needs

assessment, participant eligibility for urban Indians and evaluation.

2. In all the states included in the sample, there was noted a need for improvement in various management areas.* The SEA area needing the most improvement was evaluation.
3. USOE does not provide definitive requirements for evaluation of Title I programs. Therefore, the SEAs and LEAs do not place emphasis on this area.
4. Needs assessment activities conducted in the states sampled were weak.
5. Dissemination of materials at the SEA level has been in need of improvement; timely dissemination at the SEA level is vital to sound management at the LEA level.
6. The lack of advance funding in Title I has seriously cut back on the effectiveness of program planning and staffing.
7. The Title I program is too closely identified with the urban Black. As a result, urban Indians are not becoming involved in the planning of Title I programs.

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*Management areas are discussed in detail under the following heading of Methods.

Recommendations - Title I, ESEA

1. The USOE should develop and disseminate definitive guidelines to SEAs and LEAs to assist them in effective Title I program evaluation.
2. The USOE should also develop and disseminate definitive guidelines for the process of conducting effective needs assessments.
3. Title I funding should be made at least one year in advance to allow LEAs adequate time for program planning and staffing.
4. The USOE should recommend to the Congress that the low-income factor for determining eligible attendance areas be abolished. Determination of Title I participants should be made on the basis of needs alone, rather than needs of children who reside only in attendance areas with a high concentration of low-income families.
5. Because the Title I program is so closely identified with urban Blacks, and because urban Indians have had little say in the planning of Title I programs, the following changes are recommended:
   - Indian involvement in Title I should be ended.
   - Title IV should be fully funded and should provide educational services and activities for all Indian children, urban and rural.

Conclusions - Title IV, LEA

1. When problems involving Title IV occur or when clarification of regulations or technical assistance is needed, LEA personnel must communicate directly with the USOE.
2. The lack of advance funding in Title IV has seriously cut back on the effectiveness of program planning and staffing. The 1973-1974 Title IV program was hampered from its very outset because the LEAs had only two weeks in which to prepare applications, design programs, form PACs, etc.
3. Only limited monitoring of Title IV programs is performed by the USOE.

Recommendations - Title IV, LEA

1. USOE should provide comprehensive regulations and guidelines to all administrative agencies involved in the planning and implementation of Title IV programs.
2. Channels of communication should be developed, at all levels, between Title IV organizations and other federally funded program organizations for the purpose of improving program design and coordination.
3. Title IV funding should be made at least one year in advance to allow the LEAs adequate time for

program planning and staffing. Title IV should be fully funded to provide educational and cultural services and activities to Indian children.

Conclusions - P. L. 874

1. Because of the nature of P. L. 874 funding, management functions have consisted merely of managing the processes of application development, review, approval and reporting.
2. Management functions in community surveys to gather information concerning federal properties have not been effective. Adequate survey procedures and follow-up have not been placed into operation to ensure that valid, up-to-date information is collected.
3. The lack of clear understanding of the meaning of eligible federal tax-exempt properties has hampered, to a degree, the ability of the LEA to secure accurate information in their communities.
4. Training by USOE and SEAs has generally done little to upgrade the management skills of the LEAs. LEAs are not involved in establishing rates of payment. In addition, they are unaware of the fact the P. L. 874 rates of payment can be negotiated with the SEAs if the rates are not sufficient to provide a level of education

equivalent to that maintained in comparable school districts.

5. The need of LEAs for P. L. 874 funds varies with the total educational financing structure of the states in which they operate. Thus, districts from those states which rely heavily on real estate taxes need more Impact Aid to replace revenues from non-taxable real estate than do districts in states where education is financed primarily from other sources of revenue, such as entertainment or luxury taxes.

Recommendations - P. L. 874

1. Training in management processes should be provided by SEAs to LEAs to facilitate efficient and accurate collection of survey information concerning relationships of communities to federally controlled properties.
2. USOE should develop and disseminate concise guidelines as to what constitutes eligible federally controlled property.
3. The USOE should devise a method whereby the LEAs can assess their needs for Impact Aid based on the educational financing system that affects them.
4. The USOE should train LEAs in specific methods and procedures for determining rates of payments

under P. L. 874. This training should include information about procedures for negotiating rates with the SEAs.

Conclusions - Johnson-O'Malley

1. Because of the ambiguity of the nature of the funding source, definitive regulations and guidelines should be developed to replace the current ones which are not adequate. *(See p. IV 150)
2. In some of the states visited, SEAs knew nothing about the nature and/or scope of Johnson-O'Malley programs in operation in the LEAs. Because in some states the BIA does not involve the SEAs in Johnson-O'Malley, the SEA's management advisory effectiveness has been lost in these states.
3. It was found that in some states Johnson-O'Malley money has been used to supplement the general education budget. This violates the expressed intent of the legislation that Johnson-O'Malley funds be used only for Indian children. Urban Indians receive no benefit from Johnson-O'Malley.
4. The lack of advance funding of Johnson-O'Malley has seriously hampered LEAs in program planning and staffing.

Recommendations - Johnson-O'Malley

1. BIA should review all Johnson-O'Malley regulations and guidelines in detail with representatives

of USOE, SEAs, LEAs, and Tribal organizations. Definitive interpretations must be made concerning the specific language of the legislation. Meaningful revisions must be made in the regulations and guidelines wherever necessary.

2. BIA, through effective monitoring of the BIA Area Offices, should take definitive action to ensure that Johnson-O'Malley funds are not being used in a manner that violates the intent of the Johnson-O'Malley Act.
3. In order to allow all users of Johnson-O'Malley funds sufficient time for program design, staff development, etc., the BIA should fund Johnson-O'Malley at least one year in advance.
4. Current Johnson-O'Malley legislation should be revised to permit programs to be designed for urban Indians.
5. Extensive training in all facets of program management must be implemented at the LEA level. This should be done through the BIA, the SEA or the Tribal organization.
6. The BIA should coordinate all educational programs under its control with USOE in order to maintain consistency with the National Plan for Education: Federal Programs.

Conclusions - State Planning Division

1. Little, if any, coordination in planning and

evaluation exists at the SEA level. This has given rise to ineffective planning and evaluation practices in the LEAs.

Recommendations - State Planning Division

1. The USOE, by requiring SEAs to submit state and operational plans, should ensure that coordination of planning is achieved. SEAs, through monitoring visits, should ensure that planning is being done jointly between SEAs and their LEAs.

*NOTE: The conclusions and recommendations on the Johnson-O'Malley program (pp. IV-148 to IV-149) do not take into account the new Rules and Regulations published in the Federal Register on August 21, 1974. Yet, there is still a need for interpretation by the BIA through guidelines. See discussion of this question in Appendix V.

Methods

The management study portion of this report was designed and conducted by Communication Technology Corporation (CTC), under contract with ACKCO, Incorporated. CTC was charged with the responsibility of evaluating the overall effectiveness of key management functions at the State Education Agency (SEA), Local Education Agency (LEA) and Bureau of Indian Affairs (BIA) administrative levels, and reporting on the existing management capabilities of the various agencies responsible for the administration of federal education programs for Indian children.

The management study was directed toward four sources of federal funds: Title I of the Elementary and Secondary Education Act (ESEA Title I); Title IV of the Indian Education Act, of Public Law 92-318 (LEA Title IV); Johnson-O'Malley Act (JOM); and Public Law 81-874 (P. L. 874). The results of this study, as well as some of the results from the Fiscal Study and Program Study, highlight the strengths and weaknesses in management functions associated with the utilization of federal funds for Indian Education.

The time frame limitations on the management study precluded any broad-based management assessment that would include the measurement of the numerous factors or variables affecting the quality and style of management practices in the various agencies. However, eight key functional areas were identified as most relevant in the management of the federal programs under review. The instrumentation design was structured into these eight(8) functional areas across management levels. Conceptual definitions for the areas and levels are as follows:

FUNCTIONAL AREAS

Program Design - includes the entire process at all administrative levels involved in goal definition, goal prioritization, objective definition through to application format development, application content development and application submission.

Evaluation - includes the entire process at all administrative levels involved in developing evaluation needs, objectives, plans, processes, schedules for all programs, In addition, this section includes policies, procedures, guidelines and instrumentation for evaluating key administrative activities such as training, monitoring, technical assistance, exemplary programs, etc.

Dissemination - includes the entire process at all administrative levels involved in developing dissemination plans, schedules, etc. through to the actual (timely) dissemination of key administrative data such as: Federal/ State law, regulations, policies, procedures, guidelines, evaluation findings, etc.

Management - includes the entire process at all administrative levels involved in developing, collecting and reporting information (program, fiscal, etc.); assigning and controlling staff activities associated with the administration of the federal program.

SEA/LEA Training - includes the entire process at all administrative levels involved in assessing training needs, developing training materials and implementing training through workshops/conferences.

Technical Assistance - includes the entire process at all administrative levels involved in developing procedures and providing technical assistance in all areas including unapprovable applications.

Organization - includes the entire process at all administrative levels involved in determining organizational needs, performance objectives, facilities, hiring practices through staff assignments for all aspects of program administration.

Legislation - includes the entire process at all administrative levels involved in having the capability to influence legislation through to the interpretation of regulations and guidelines in all aspects of program administration.

The study addressed the existence of management capabilities in each of the above areas and the overall level of effectiveness of all functional areas at the three administrative levels: SEAs, LEAs and BIAs.

In order that data, findings and conclusions not be identified with idividual SEAs or LEAs, the sites have been coded. States are identified by letters ranging from A through I. LEAs are identified as LEA 1 through LEA 15. BIAs are identified as BIA 1 through BIA 9. SEAs are identified as SEA 1 through SEA 9.

Sampling and Findings

All phases of the Joint USOE/BIA Study, except the Legislative Study, were directed toward gathering information at various sites throughout the country.

The study sample consists of sixteen local educational agencies in nine of ten states with the largest Indian populations and the nine SEAs. Both the state and local educational agencies were selected jointly by the U. S. Office of Education and the Bureau of Indian Affairs. In addition, nine area education offices of the BIA were included in the sample.

Within the limited time frame, it was impractical to collect data from large numbers of administrators and program directors in each of the 15 LEAs, 9 SEAs and 9 BIAs. Instead a respondent was chosen for each of the funding sources at each of the agencies on the basis of his or her knowledge of the administration of these funds. Survey instruments were utilized with each respondent in conjunction with on-site interviews. The interviews included the respondent's perception of problems, concerns, failures and successes, as well as an opportunity for the interviewee to relate his or her recommendations and general comments.

The instrumentation employed was one originally developed for use at the SEA and LEA levels to assess capabilities in managing ESEA Title I funds. However, the instruments through slight modifications were adapted to other agencies and funding sources. Due to the nature of the Johnson-O'Malley and P. L. 874 programs, new instrumentation was developed for these sources using the same basic content and framework. The instruments and interview schedules were structured into the eight functional areas, with numerous items concerning existence and overall effectiveness of management activities contained in each area.

Discussion of Findings

Overview

The summary tables on which this portion of the study is based are found in Appendix II. A rating scale and a narrative description are presented for each of the eight functional areas. This rating scale/narrative description represents the overall evaluation of the functional areas. Descriptions of the functional areas appear in the previous section. Explanations of the rating scale numbers and corresponding narrative descriptions are shown on the next page:

Rating Scales

RATING	DESCRIPTION	EXPLANATION
6.0	Sound management functions noted to be operational; exemplary and worthy of dissemination	Evidence of the functional management areas is in existence. They are both operational and exemplary. No hesitation would be made to disseminate to other agencies.
5.0-5.9	Sound management functions noted to be operational; no need noted to improve	Evidence of the functional management areas is in existence. They are operational and, barring unforseen difficulties in the future, there exists no need to improve/change present process.
4.5-4.9	Sound management functions noted to be operational; some need to improve weaker practices	Evidence of the functional management areas is in existence. They are operational, however, there is a realization that, within the process, weaknesses do exist that require improvement.
4.0-4.4	Sound management functions noted to be operational; critical need to improve weaker practices.	Evidence of the functional management areas is in existence. They are operational, however, there is a great realization that, within the process, many critical weaknesses that require immediate attention and improvement in order to maintain proper management control exist.
3.5-3.9	One or more management functions found to be nonexistent; critical need to implement nonexistent management practices	There is evidence to show that at least one, possibly more, management functions are not in existence within the areas. They are critical for effective management and must be implemented immediately in order to sustain management control.

Rating Scales (continued)

Rating	DESCRIPTION	EXPLANATION
3.0-3.4	Most management functions found to be nonexistent; critical need to implement management practices.	The evidence indicates total lack of effective management control. No management functions are in operation. All management functions must be placed into operation immediately in order to sustain management control.

Ratings lower than 3.0 do not appear because such responses fell in the range of non-applicability.

The responses to the various items within each functional area were averaged, producing composite indices for each functional area and for each program at each administrative level. These overall ratings were entered into summary tables and converted to graphic presentations followed by a discussion of findings.

Organization

Data presentations are made for each state visited according to level of administration and funding source. State identification has not been made due to the fact that interest is drawn to the entire sample survey rather than to individual states.

In addition, presentation is made of the summary data elicited from Planning Directors, Officers, etc. This data provides information concerning the extent to which overall joint planning is conducted at the state level, These summary tables are presented in Appendix II B and a description of funds flow is presented in Appendix II A.

National Sample

Title I

BIA Level. Although Title I funds flow through the BIA level, analysis of the management functions of the BIA for Title I was not within the purview of CTC.

SEA Level. The data would suggest that, generally, across all SEAs, the Title I Program is being managed effectively. In the areas of dissemination, program management , training, technical assistance and organization, all management functions have effectively been placed into operation. However, on the whole, SEAs unanimously feel that weaknesses do exist in the system and, consequently, there is some need for improvement. In the area of evaluation, SEAs in general recognize that all management functions are operational, however, critical needs do exist in some of the weaker management functions that require immediate attention. SEAs feel strongly about their effectiveness in influencing legislation and, consequently, see no current need for improvement.

LEA Level. The data would suggest that for all the areas (i.e., program design, evaluation, dissemination, program management, training, technical assistance, organization, and legislation) the average LEA is performing with effectiveness. Sound management functions have been placed in operation, but there is general agreement that some weaknesses in the system do exist. These weaknesses do require some improvement to bring them up to an effective level.

Title IV

BIA Level. The BIA area offices have no management responsibility under Title IV, since the funds for this program go directly to Indian Tribes and/or organizations.

SEA Level. The SEAs have no management responsibility under Title IV, since the funds for this program go directly to Indian Tribes and/or organizations.

LEA Level. The data indicate that sound management functions are operational in all areas. However, they do agree that weaknesses exist and that there is a critical need to improve the weaker areas of training and technical assistance. The other areas such as program design, evaluation, dissemination, program management, organization and legislation are in need of some improvement.

Public Law 874

BIA Level. The BIA area offices have no management responsibility under P. L. 874, since these funds go directly to SEAs.

SEA Level. The data indicate that sound management functions are operational in the areas of program management, technical assistance, organization and legislation; however, there is a critical need to improve weaknesses in each of these areas. In the areas of program design, evaluation, dissemination and training, management functions were found to be nonexistent, and there is a critical need to implement these management functions.

LEA Level. The data suggest that sound management functions exist in all areas, except training, where there is a critical need to implement nonexistent management functions. In the area of evaluation, all management functions are in operation, but there is still some need to improve weaknesses in this specific area.

Johnson-O'Malley

BIA Level. The data suggest that, with the exception of training, one or more of the management functions are nonexistent in all other areas. In the case of training, most management functions seem to be nonexistent. In both cases, in order for there to be effective management of Johnson-O'Malley funds from the BIA level, steps must be taken immediately to overcome the critical need for implementation of sound management practices.

SEA Level. The data suggest that in the areas of program design and training, one or more of the management functions do not exist, and there is a critical need for their implementation. In the areas of evaluation, dissemination, program management, technical assistance, organization and legislation, sound management practices do appear to be in operation. However, there does exist a critical need to improve some of the weaker of these management practices.

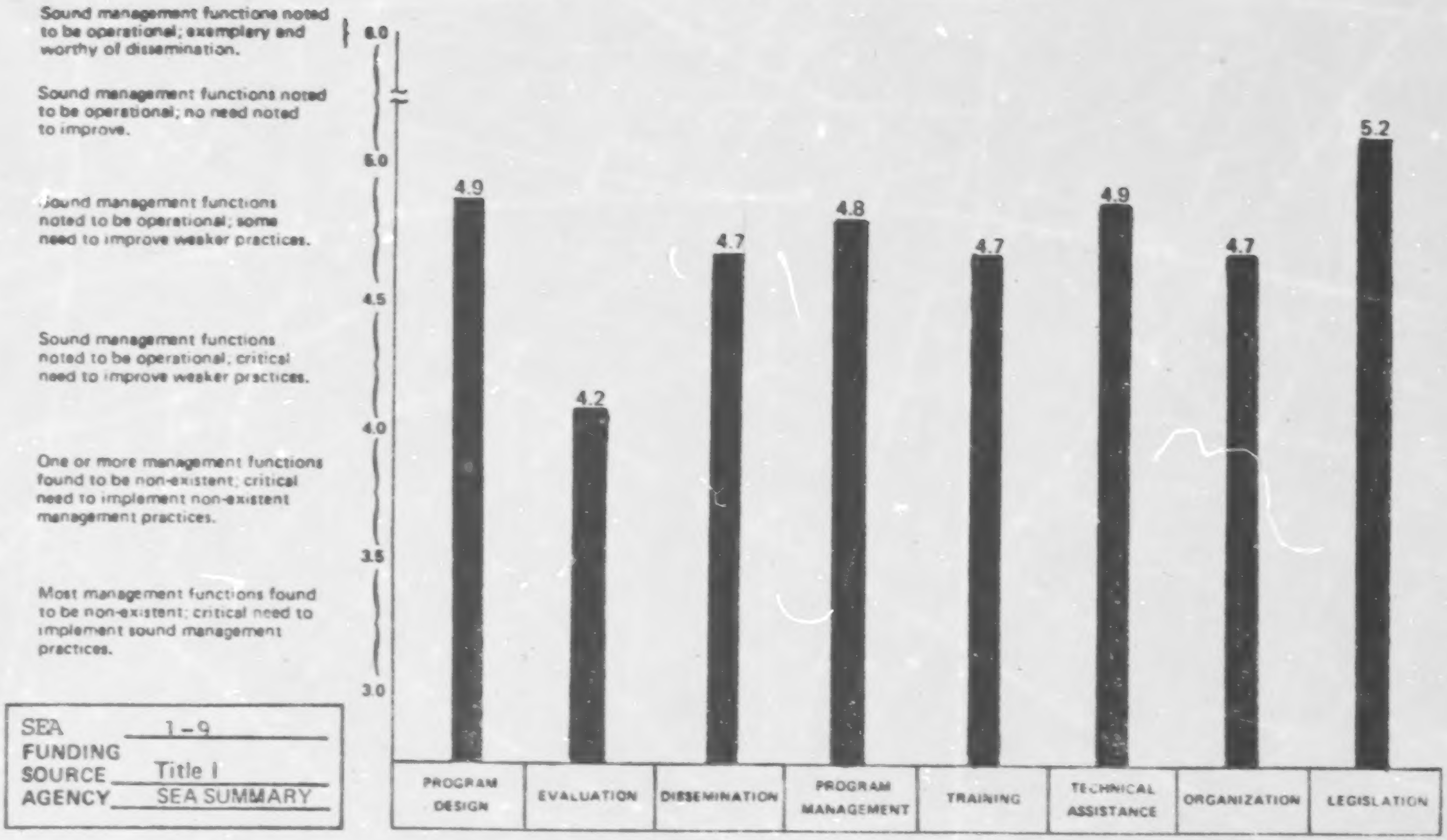
LEA Level. The data suggest that critical problems exist in the management of Johnson-O'Malley funds at the LEA level. In the areas of training and legislation, the data would suggest that most management functions are nonexistent. In the areas of evaluation, dissemination, program management, technical assistance and organization, one or more of the management functions are nonexistent. In both cases, there exists a critical need for implementation of sound management practices. Only in the area of program design do effective management functions exist. However, a need is demonstrated to overcome some of the weaker management practices in this area as well.

Graphic Presentation of Ratings

The following graphic presentations are refined summaries of the data collected during the field visits. As previously explained, no attempt has been made to identify the sites visited. The reason for this is that nothing meaningful would be gained by identifying the states.

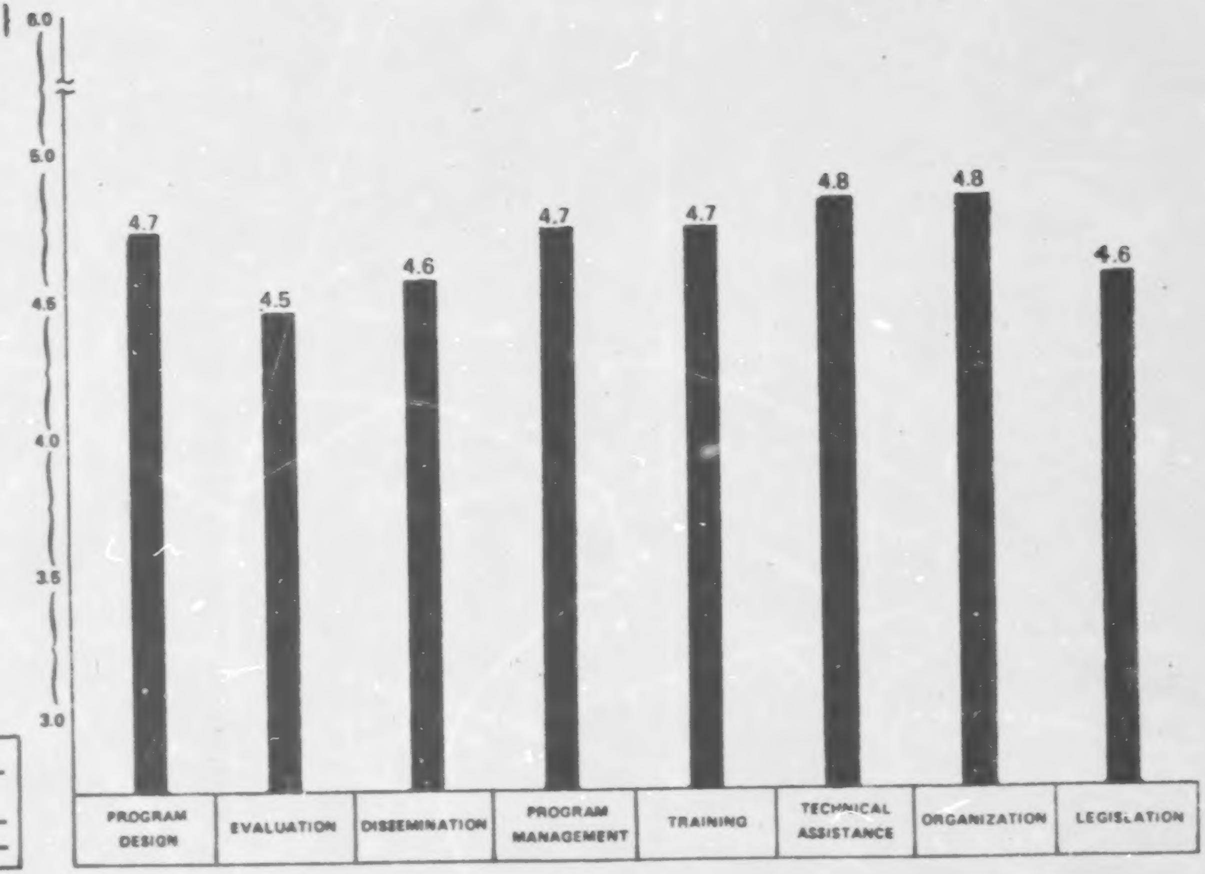
*NOTE - The LEA Graphs include LEA 1-16 since the Management Team went to one extra site.

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION



SEA 1-9
FUNDING
SOURCE Title I
AGENCY SEA SUMMARY

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION



LEA 1-16
FUNDING SOURCE Title I
AGENCY LEA SUMMARY

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION

Sound management functions noted to be operational; exemplary and worthy of dissemination.

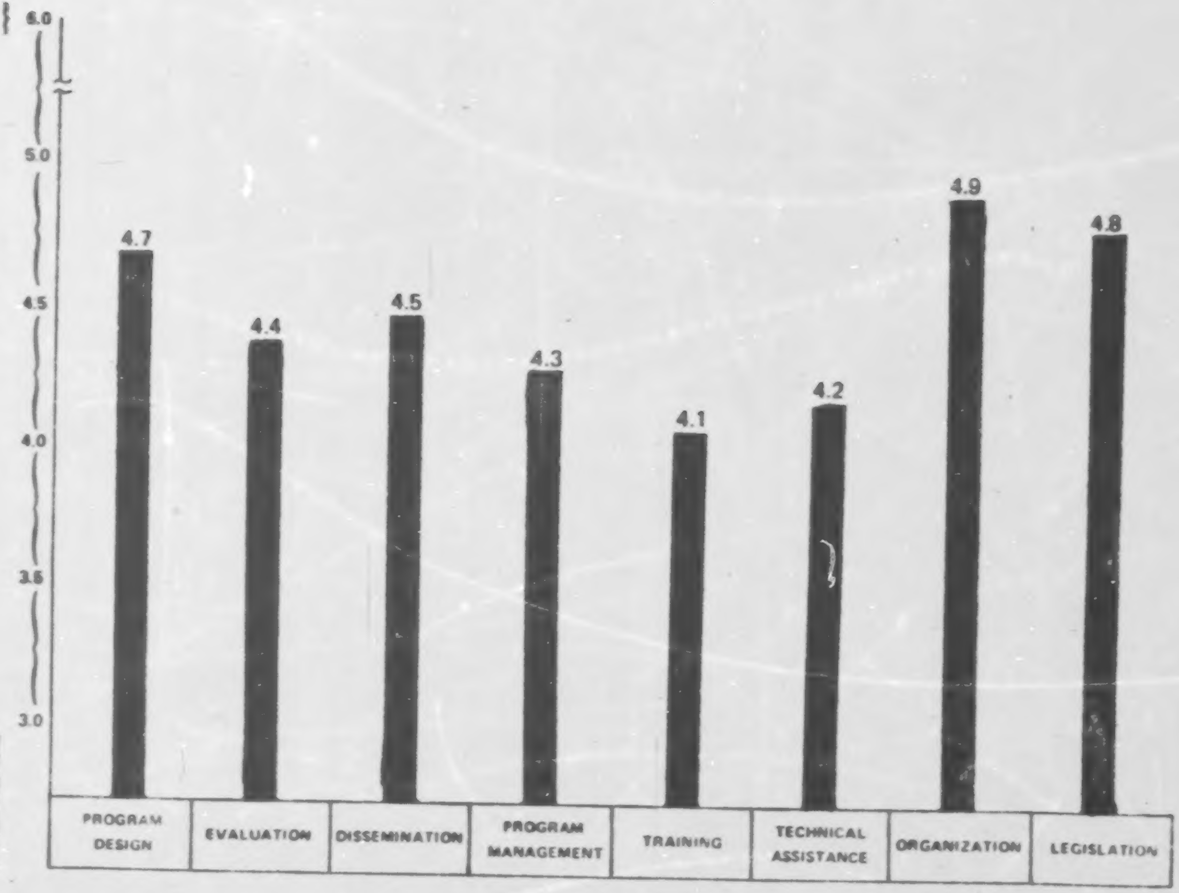
Sound management functions noted to be operational; no need noted to improve.

Sound management functions noted to be operational; some need to improve weaker practices.

Sound management functions noted to be operational, critical need to improve weaker practices.

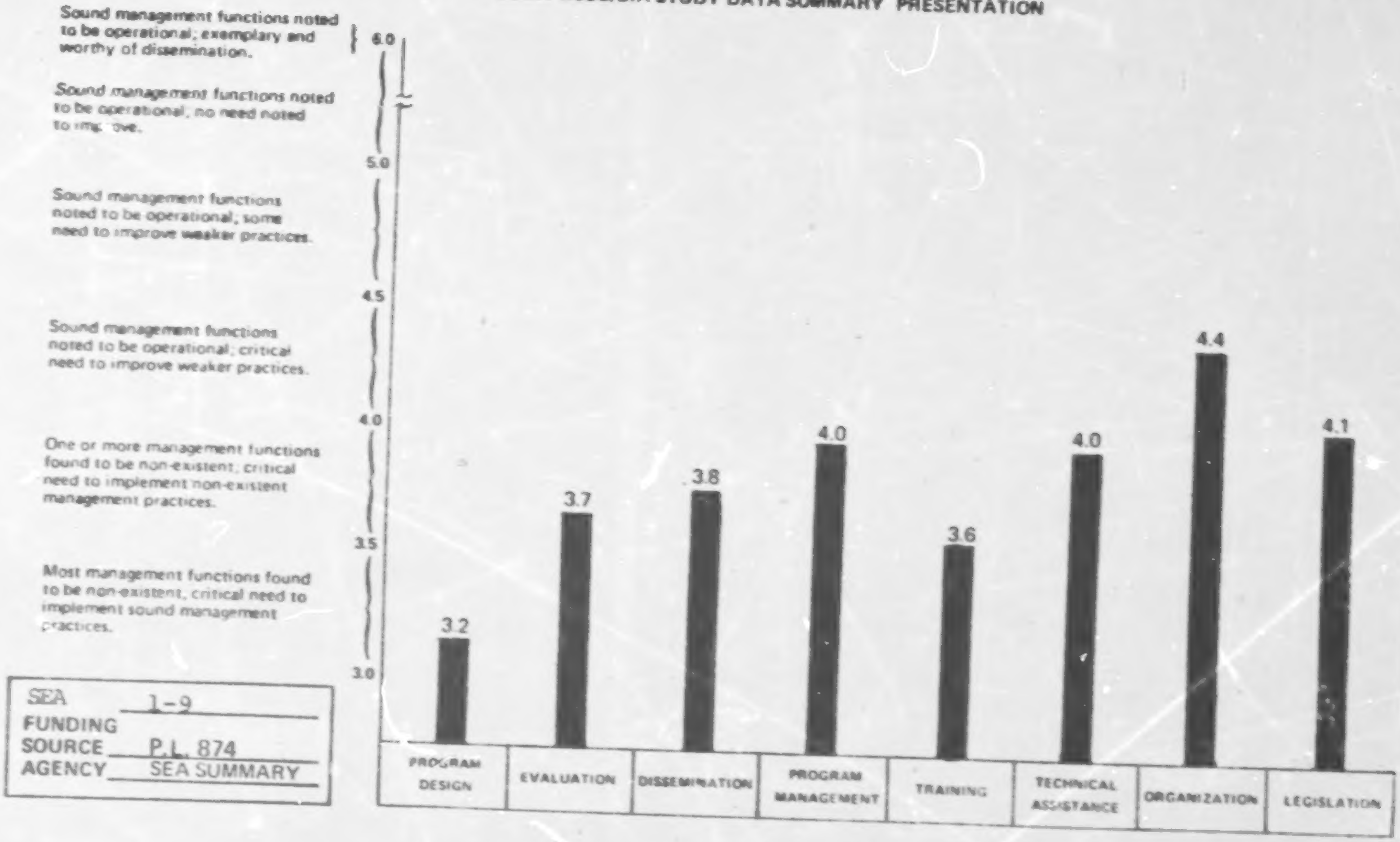
One or more management functions found to be non-existent; critical need to implement non-existent management practices.

Most management functions found to be non-existent; critical need to implement sound management practices.



LEA 1 to 16
FUNDING SOURCE Title IV
AGENCY LEA SUMMARY

JOINT USOE/UIA STUDY DATA SUMMARY PRESENTATION



SEA 1-9
FUNDING
SOURCE P.L. 874
AGENCY SEA SUMMARY

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION

Sound management functions noted to be operational; exemplary and worthy of dissemination.

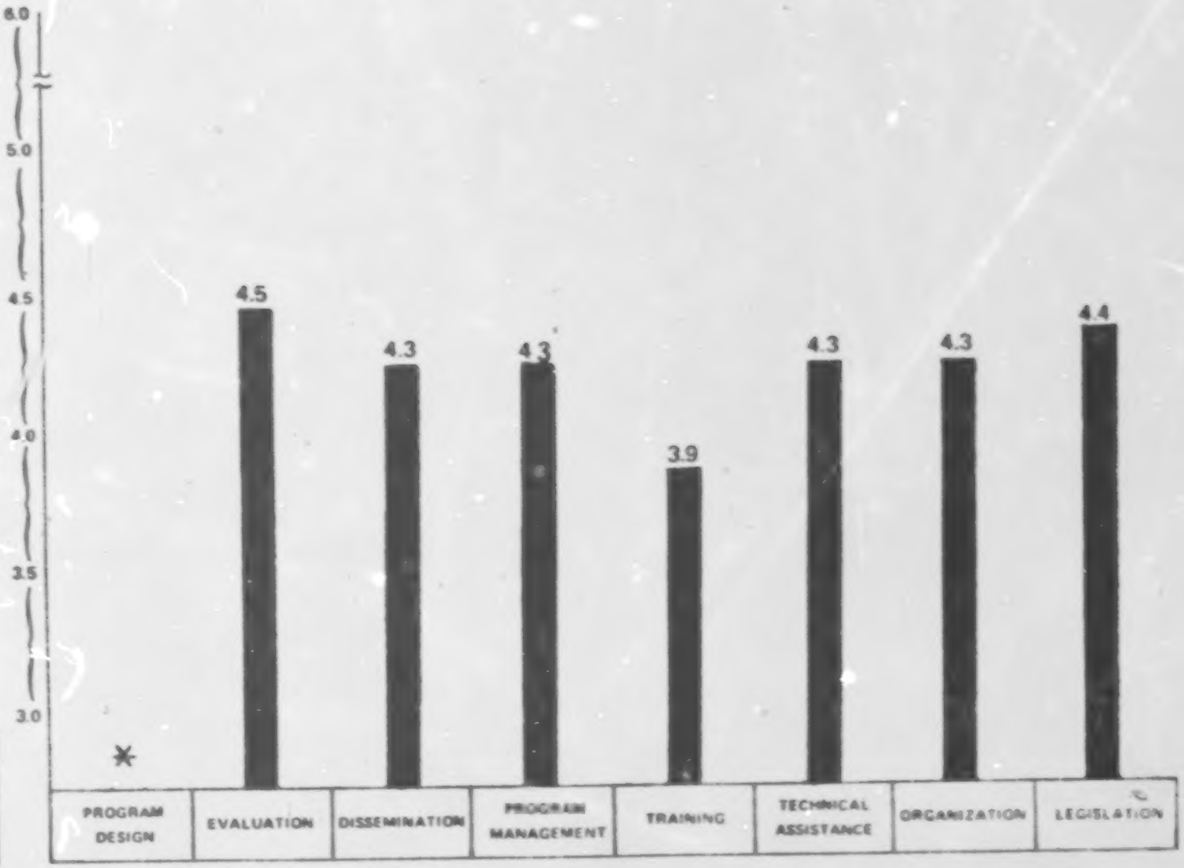
Sound management functions noted to be operational, no need noted to improve.

Sound management functions noted to be operational; some need to improve weaker practices.

Sound management functions noted to be operational; critical need to improve weaker practices.

One or more management functions found to be non-existent; critical need to implement non-existent management practices.

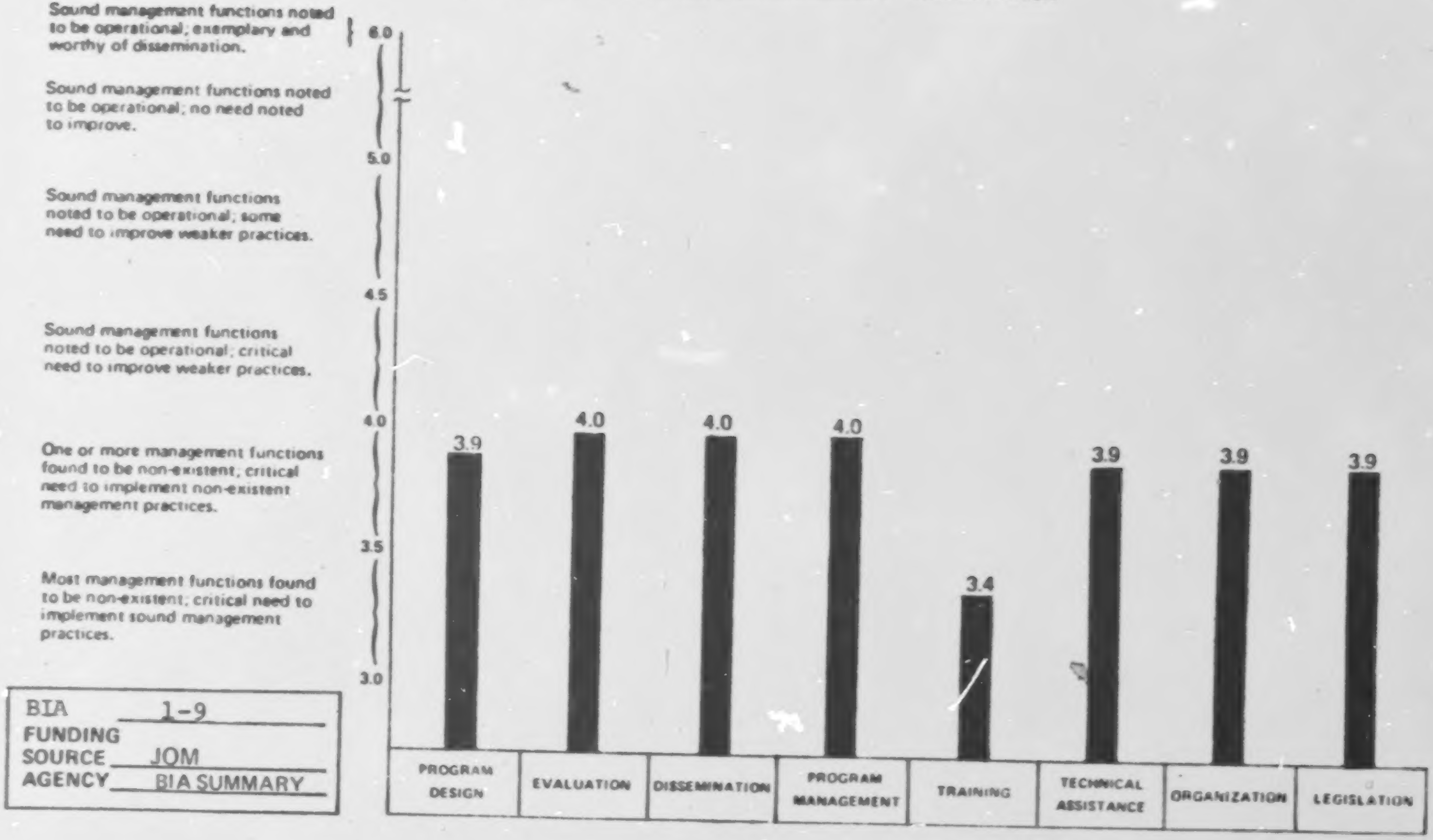
Most management functions found to be non-existent; critical need to implement sound management practices.



LEA 1 to 16
FUNDING SOURCE P.L. 874
AGENCY LEA SUMMARY

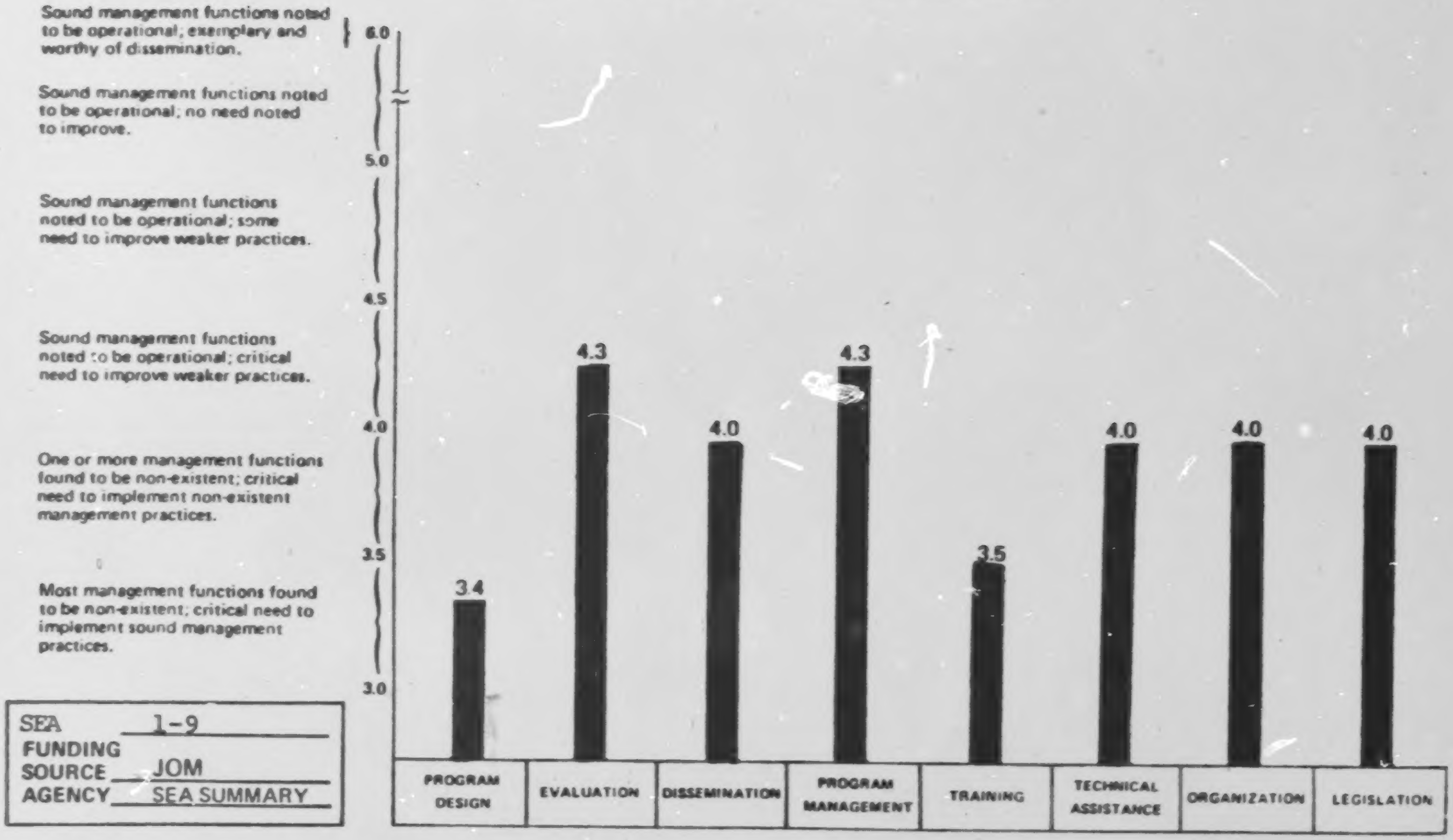
* does not apply

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION



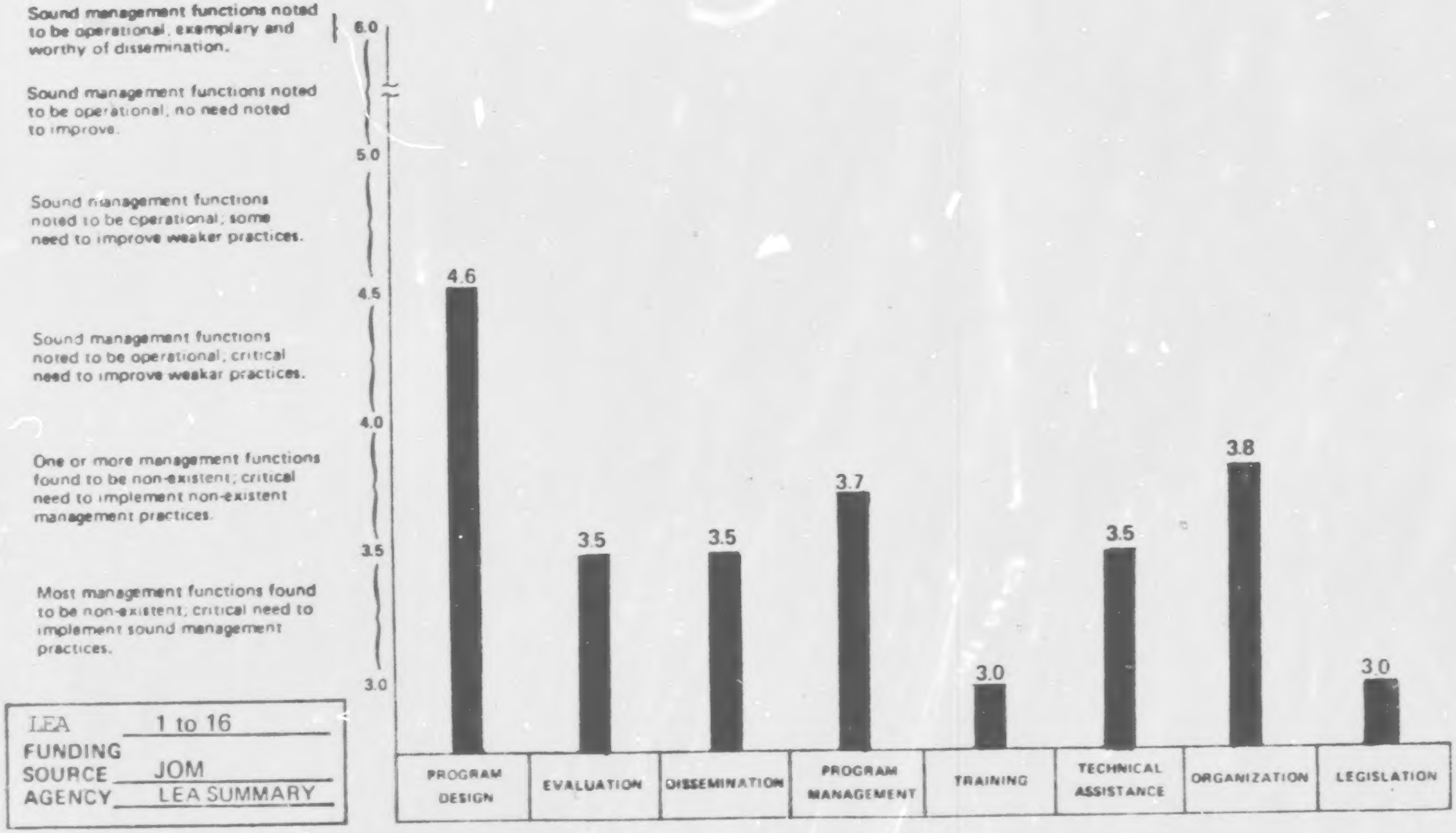
BIA 1-9
FUNDING
SOURCE JOM
AGENCY BIA SUMMARY

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION



SEA 1-9
FUNDING
SOURCE JOM
AGENCY SEA SUMMARY

JOINT USOE/BIA STUDY DATA SUMMARY PRESENTATION



LEA 1 to 16

FUNDING SOURCE JOM

AGENCY LEA SUMMARY

SECTION IV: FINDINGS AND DISCUSSION

C. FISCAL STUDY

The findings, conclusions and recommendations are presented basically unaltered from the subcontractor's report, except for basic editing and some changes in organization. We have divided the conclusions and recommendations by administrative levels and by programs. We realize that to solve the basic fiscal problems of Indian Education the findings of the fiscal study must be combined with findings in the other study areas, and the total question of school finance must be addressed.

Although school finance is discussed in more detail in Section II-C, we must mention a few ideas in relation to the fiscal study. As the following methods section explains, although we were specifically mandated to study only the four acts mentioned in the RFP, it was impossible to get a clear picture of them except as part of the overall LEA budgets.

However, there is a problem in obtaining a clear picture of the LEA budgets themselves. Aside from the basic problem of lack of uniformity of accounting procedures and classification of expenditures, there are many elements that must be taken into account before realistic comparisions of expenditures are made or adequate solutions are found. These elements include:

- The lack of a definition of what comprises basic support, and consequently, the lack of a method for arriving at an amount that constitutes an adequate per pupil expenditure to take care of basic support
- The socio-economic background and special needs that must be taken care of before a basic education program can be effective
- Geographic factors of school districts such as lack of teacher housing, great distances, poor roads, inadequate health facilities, etc., which influence LEA spending
- The way the size of an LEA influences administrative and other costs
- The need for fiscal reporting to be related to actual needs of students.

The above should be kept in mind when reading the following conclusions, recommendations and general discussion of findings, and also the individual site reports and compliance ratings in Appendix III.

Summary of Conclusions and Recommendations

General

Conclusion - Based on what investigation we have been able to make of expenditures in the LEAs we reviewed, we conclude that the existing methods of school financing have neither assured that Indian children receive an equalized per pupil expenditure nor that they are provided an adequate basic education program. This lack of adquate "basic support" is part of the cause for federal supplemental and special programs being used for items that should be part of the basic education program of every school. We further conclude that talking about per pupil expenditures and amounts of money is not adequate in itself, but must be combined with a look at special needs and a setting of educational standards.

Recommendation - We recommend that USOE in cooperation with all levels of administration and governmnent take steps to assure that Indian children are assured at least the national average per pupil expenditure and that standards for a basic education program are set.

Conclusion - At the present time it is extremely difficult to make meaningful comparisons between states or districts because of the variations in accounting methods and the differences in classifying expenditures. A standardized accounting system would provide for comparison, strengthen comparability and supply data for planning and evaluations.

Recommendation - In order to assist agencies which receive money for Indian Education, we recommend that USOE and BIA set up a joint project to help agencies implement a standardized accounting and reporting system. This system should include criteria for classifying expenditures by such areas as instruction, supporting services, special needs etc. We further recommend that a national body be set up to process reports.

Conclusion - The lack of advance knowledge of funding levels and the prevalence of late funding, prevent adequate planning or evaluation for most programs.

Recommendation - We recommend that LEAs and other groups be notified of funding levels far enough in advance to allow adequate planning and proposal writing time, and that programs be funded at least one year in advance.

BIA

Conclusion - After reviewing many of the studies that have been done on the BIA and after gathering data from various Area Offices, we conclude that there is a great difference in the money that is appropriated for BIA education and the money that is actually spent per pupil in BIA schools.

Recommendation - We recommend that a thorough fiscal review of the BIA be done tracing funds from the Washington level to the local level, and that a more equitable distribution process of all BIA education funds be developed and implemented.

PL 874

Conclusion - After finding that computation of the PL 874 rate by using comparable districts in the same state as the LEA does not provide adequate funding to take care of basic educational needs, and after finding that Indian LEAs spend more money compensating for geographic factors peculiar to reservations, we conclude that a new rate of computation is needed for Indian districts.

Recommendation - We recommend that the PL 874 rate for Indian districts be based on the national average per pupil expenditure and that other Indian districts be used as comparable districts as far as needs are concerned.

Conclusion - The finding that local administrators were unaware of how geographic factors pertained to the PL 874 rate and that the rate was negotiable leads to the conclusion that SEAs are not providing the technical assistance in this area that they are given funds to provide.

Recommendation - We recommend that USOE assure that LEAs receive the necessary information on the PL 874 rate. We further recommend that funds be given directly to the LEA to purchase technical assistance in this area.

Johnson-O'Malley

Conclusion - Findings at the various sites lead us to conclude that either a distribution formula did not exist or, if one did exist, it was not equitable or was not being implemented. We further conclude that with existing reporting requirements it is not possible to compute an equitable formula.

Recommendation - We recommend that the BIA coordinate with USOE to set up a standard reporting system for JOM programs and to develop and implement an equitable distribution formula.

Conclusion - After reviewing Johnson-O'Malley audits and contracting procedures we conclude that there is a basic need for a standardization of contracting procedures and the implementation of a monitoring and evaluation process.

Recommendation - We recommend that the BIA coordinate with USOE to develop and implement contracting procedures and a monitoring and evaluation system. We further recommend that Tribal groups and organizations be involved in this development.

TITLE IV

Conclusion - Although findings indicate that Title IV programs are used to fund activities that are also funded under other programs which leads to statements of duplication, we conclude that Title IV is used to fund needed programs because of the absence of adequate basic support, the lack of, or inadequate funding of, other programs or the failure of other programs to meet the needs of Indian people.

Recommendation - We recommend that since Title IV has shown evidence of being the program most responsive to Indian needs, that it be fully funded.

Conclusion - LEAs have seen Title IV as a means of supplying basic support to free general fund monies for their other priorities and others have used Title IV for supplemental programs for Indians to free other supplemental programs for other groups.

Recommendation - We recommend Title IV rules and regulations be clarified to set a direction for Title IV projects and to assure control by Indian parent committees over setting priorities. We further recommend monitoring of LEAs to assure they are not using Title IV funds to supplant monies they should be spending from other sources.

TITLE I

Conclusion - Whether due to comparability requirements or targeting procedures, Indian children are not receiving an adequate share of Title I funds to meet their needs. Also, especially in urban areas, Indian parents have little or no say in program matters.

Recommendation - We recommend that USOE re-examine comparability requirements and targeting procedures in relation to the needs of Indian children.

We also recommend that USOE provide funds to LEAs to purchase technical assistance in the areas of comparability and targeting. We further recommend that, especially in urban areas, Title I money be earmarked for Indian students and that Indian parental input be assured.

Methods

The methodology employed in this study is reported in phases. Phase I entails on-site visitations; Phase II reflects data gathering, reduction and analysis; Phase III includes the development and submission of recommendations.

The reporting order for the federal programs reviewed is as follows: Impact Aid (Public Laws 874 and 815); Johnson-O'Malley; Public Law 92-318 (Title IV); and Public Law 89-10(Title I).

Phase I - On-Site Reviews

Fiscal review teams were identified in relation to one of the principal objectives of the study. This objective was to view first-hand the administrative procedures in terms of fiscal accountability. Accordingly, the composition of the fiscal review teams was weighted heavily with individuals proficient in accounting.

The review centered around the LEA's plan of organization. Safeguards within finance operations in each of the LEAs visited were studied for accuracy, reliability and adherence to prescribed rules and regulations. The fiscal review personnel attempted to ascertain to what degree administrative controls were being practiced. Those administrative controls monitored included statistical analysis, programs development, delivery practices, program evaluation, performance reports, employee training programs, program quality control and utilization of viable options. At each site the following characteristics were considered to be satisfactory for a system of internal control:

- A plan of organization which provided appropriate segregation of functional responsibilities
- A system of authorization and record-keeping procedures adequate to provide reasonable accounting control over program funds
- Sound practices to be followed in performance of duties and functions of each of the organizational departments
- Personnel of a quality commensurate with responsibilities.

Such elements, considered basic prerequisites for fiscal responsibility, would provide for reasonably successful operations without any serious deficiencies.

Phase II - Data Gathering, Reduction and Analysis

The study team examined various documents such as applications, forms and budgets of the various programs. The analysis, developed by the four-member fiscal team, three of whom were licensed public accountants in the state of South Dakota, included:

- A re-examination of certified audits for each LEA
- Interviews conducted on-site from instrumentation developed in earlier phases of the study

- Comparison of the above results with current rules and regulations for Title I, Title IV, and P. L. 874 and JOM for discrepancies in the expenditure of federal funds by each respective LEA.

Phase III - Development and Submission of Recommendations

In Phase III of our approach, we were able to formulate various recommendations and conclusions which we have already set forth. A discussion of the development of these recommendations and conclusions follows.

After the first test site, it became apparent that if the impacts of these various federal programs were to be effectively evaluated, they would have to be reviewed within the broad spectrum of all the federal, state and local resources directed toward the financial operation of the LEAs.

This task was not an easy one. The range of federally sponsored programs administered by the LEAs reviewed varied from the initial to the final site. This obviously presents a situation where financial comparability of LEAs is difficult if not impossible to achieve. Despite the heterogeneity among the financial structures of the LEAs we were able to classify expenditures into groups which have a high degree of correlation in certain areas. This statistical information provides an insight into the problem of financial accountability and can be useful in making the problems more manageable.

We have attempted what other studies may have excluded and that is to present conclusions and recommendations based upon an overview from a professional fiscal management aspect of all federal funds received because of the presence of Indian students in the LEA.

Discussion of Findings

General

The primary goal of the fiscal team in studying the impact of federal funds on local education agencies enrolling Indian children was to fulfill the specific request contained in the Interior and Insular Affairs Appropration Report No. 93-322 that it "wants the funds for these programs to be managed with complete fiscal responsibility." Thus, the objective of the fiscal team was to determine how federal funds affect the financial structure and policies of local education agencies (LEAs) providing education to Indian students.

Indian Education is financed from different federal funding sources with some sources such as ESEA providing both discretionary and formula grant programs focusing on the "disadvantaged" Indian needs. These differing sources of revenue have enabled certain LEA administrators, working both through the state and national level, to tap the reserve of educational dollars funded by Congress each year.

An excellent example of this became apparent in two test sites. Both of these school districts were located on reservations. Both school districts were comparable in size, number of total students enrolled and percentage of Indian children enrolled. The result was as follows:

	Pupils Enrolled	General Fund Expenditures	Per Pupil Cost
LEA 14	1,675	$1,941,200*	$1,158
LEA 13	1,435	$1,487,200	$1,036
			$ 122

The inequalities of funding in terms of basic support alone are shown more concretely by the graph on the following page. Only four of the LEAs we reviewed met the national per pupil expenditure even after PL 874 funds were applied. Another LEA met the national average after Johnson-O'Malley basic support was applied. The basic support revenue varied from below $600 per pupil to nearly $2000 per pupil.

We must mention here that we are again talking of the dollar amounts only and that the two LEAs (1 and 2) with the highest per pupil revenue were in a state that has extremely high costs and extreme geographic factors. Without a uniform definition of basic support it was hard to ascertain whether these children were receiving an adequate basic program or not.

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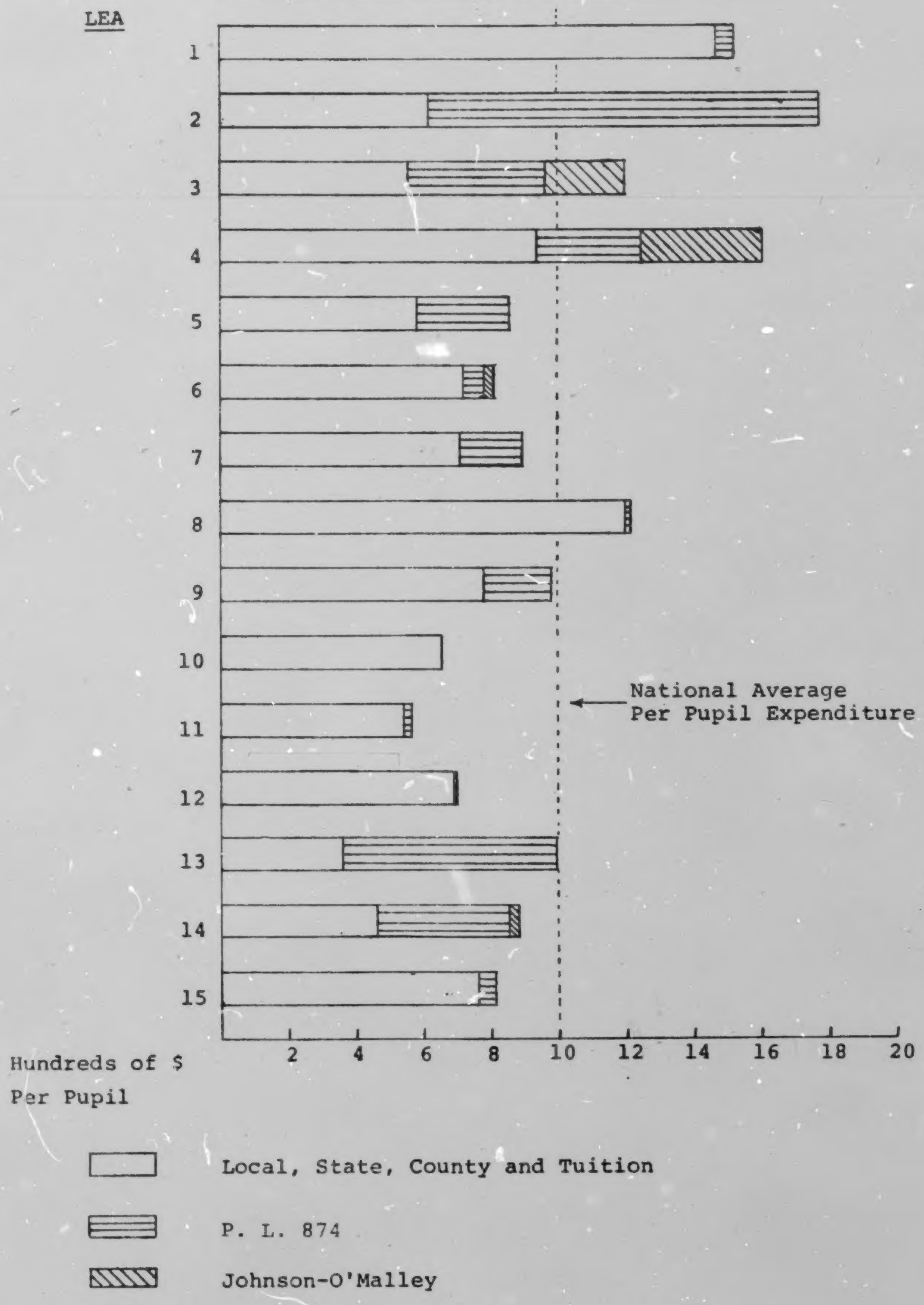
* These figures include all monies expended except Title I and Title IV.

BASIC SUPPORT REVENUE PER PUPIL BY SOURCE



For LEAs 13 and 14 the regular programs, special programs and supporting services were comparable on a per pupil basis with the exception of regular programs where the difference in per pupil costs was approximately $15 for reasons not defined by the study team. The striking inequities become apparent when the federal programs, exclusive of P. L. 874 general operating funds, are compared using the same pupil enrollment. The results are as follows:

	Pupils Enrolled	Government Programs	Per Pupil Cost
LEA 14	1,675	$820,126	$ 489
LEA 13	1,435	$446,637	$ 311
			$ 178

This difference of $178 can be directly attributed to LEA 14 administrative personnel being ingenious and ambitious in attempting to secure additional revenue for their schools.

In this case, the inequity is increased by two additional factors:

> LEA 14 was receiving approximately $96 more per pupil from local, county and state resources while both sites were taxing at the same mill level, receiving the same per pupil state support and receiving the same per pupil contribution rate for Impact Aid support.
>
> LEA 13 also had the additional problem of having a "teacher housing shortage" with teachers commuting 60 to 70 miles round trip. LEA 14 had adequate housing in the local community where the school was located.

This is a typical case which demonstrates that the knowledgeable administrator or federal program director can earn his position. There are other examples noted in our study which lead to the conclusion that the public school district which has an effective administrator or federal project director can substantially increase, unlimited by an optimum limit, the revenue for the public school district with resultant increments in per pupil cost expenditures. Many would submit that there are rules and regulations which prohibit expenditures from exceeding certain predetermined per pupil rates. This is true, however, nowhere can one find a rule or regulation setting forth an optimum limit, or even a broad range, which is considered a reasonable overall per pupil expenditure rate. It is ironic that the P. L. 874 calculation is based upon comparable school districts within a state, or in some cases, this can be negotiated; however, the optimum limit could very well become a reality if such a limit were used in arriving at a deficit or adequate program need in basic support situations. In order to eliminate inequities in per pupil expenditures, government must confront the definite need to establish expenditure criteria under basic education for LEAs which are eligible for federal money appropriated for Indian Education.

This need for establishing expenditure criteria is born out by the findings of the fiscal study team. As indicated in the discussion of individual sites contained in Appendix III-A, the LEA has a number of revenue sources available which can be successfully tapped by an administrator with a complete understanding of federal funding. There is no rationale for the federal or state government to remain indifferent to this situation if the two are to fulfill their responsibilities for resources to the LEAs in providing a basic education. It is also necessary to realize that the educational needs of Indian children have come to be associated with basic societal needs. Examples which can be cited reflect to a large degree the poor economic conditions existing among the majority of families whose children are in school. Economic deprivation in a sense dictates some of the basic needs which must be addressed to create conditions where children are mentally and physically prepared to learn.

We are not concluding that an equal per pupil expenditure for each LEA will provide an equal educational opportunity for all Indian children. This would deny the specific and extraordinary needs of Indian children throughout the land. We cannot be so pretentious as to believe that quality education can be obtained by simply pouring more dollars into an LEA than can be effectively managed.

It is obvious that an overview of expenditures on a per pupil basis has never been attempted. Total expenditures from all state and federal sources are elusive. Many of the grants and programs the LEA receives for education do not appear on the operating statements, but rather take the form of separate records kept apart from the general fund operations of the LEA. In fact, many of the educational grants and programs are contracted directly to Tribal agencies, community action agencies, or other eligible contracting agencies. Therefore, it is impossible under existing contracting criteria to be able to determine a total per pupil expenditure for a given school district.

There are many areas of inequities which we determined on a site-by-site basis; however, it is extremely difficult to make any conclusive comments without being able to ascertain an overview of all expenditures being made per pupil in a particular geographical area. If we examine the exhibit on expenditures by function, we can make comparisons and generalities but they can be challenged as a result of diverse methods of accounting and, more significantly, classification dissimilarities. The federal governmental agencies contracting with LEAs must make the necessary changes in their reporting requirements so that the federal and state money being funneled into a particular LEA can be determined. At present, there exist various bench marks and criteria on a national basis which are considered a maximum per pupil expenditure rate. There appears to be no question that such a per pupil expenditure rate is inadequate for meeting the special needs of Indian children. Nevertheless, some attempt must be made to make LEAs serving Indian children fiscally responsible and accountable for per pupil expenditures. Many LEAs are faced with a number of extraordinary circumstances such as housing, transportation, and other specific problems with which other school districts do not have to contend. These extraordinary items can be reasonably estimated when a comparison is made on a reservation-to-reservation basis or at a national level. They cannot be reasonably estimated by using school districts within a given state. It is extremely unlikely that comparable school districts exist within a given state for use in making comparability calculations for support purposes. States are hard pressed to find school districts comparable to Indian school districts in servicing such large geographical areas, having teacher housing problems, and facing the social and economic problems of an Indian school district. The use of a recommended standard accounting system would provide for accounting transactions to be broken down by function. The data would be summarized in such a manner that it would allow for the broad area of programs, subprograms, and activities to be divided into identifiable expenditure classifications. This would provide the capability of comparing cost among communities and states. In addition, it would assist local administrators in setting up performance criteria for management personnel and monitoring per pupil expenditures. For example, the system would allow a manager to compute the ratio of the number and cost of instructional staff to support service staff, thereby providing an important measure of management's planning ability. Also, ratios as to the number and cost of staff who support instructional staff may be an indicator of the value and cost of such personnel. The system would provide for a breakdown of instruction, supporting services, community services and debt service.

Instruction is subdivided into instructional programs such as elementary and high school programs. Supporting services is subdivided into supporting service programs such as special programs for the gifted and the handicapped. This breakdown provides significant information which can be effectively used by the local, state and national levels of government to assist them in evaluating the job the LEAs are doing and the money they are spending in each area. It would further allow all levels to make comparisons with other LEAs so that an evaluation of financial and program performance can be made. Since the system provides for an isolation of special needs, it is then possible to determine the need for additional funding sources to meet the specific needs of Indian children. This would provide a tool to assess the validity of statements by educational administrators, Indian parents and the public regarding the adequacy or the inadequacy of existing expenditures.

The greatest obstacle to a standardized accounting system is the various state requirements for reporting program expenditures; however, this is not an insurmountable problem and, with a sufficient amount of training for administrators throughout the LEAs, a standardized accounting system could function as a tool to improve educational decision-making. Only then can financial planners on the federal, state and local level effectively be able to determine fiscal responsibility and program accountability.

Before any concrete and meaningful comparisons can be made on a state-by-state or district-by-district basis, accounting and reporting standardization must take place. Much has been done already in this area by the development of an HEW handbook entitled Financial Accounting - Classification and Standard Terminology for Local and State School Systems. This handbook provides an LEA with a valuable tool for classifying transactions and organizing data in a manner which will permit the interrelating and combining of data elements that result in a wide range of information. The goal of comparability is substantially strengthened and achieved for school districts implementing the system. Only one site visited had been using the system. Their cost per pupil data for all programs and individual programs were far superior to those of any other system reviewed. Financial information from use of this system can provide:

- The public with data about the costs and evidence of Indian parental participation in the education of their children.
- The enactment of legislation in response to recognized educational needs.
- The information to assist in planning, evaluating and decision-making for current educational programs.

The fiscal study group recommends that all eligible contracting agencies receiving money for Indian education convert to the use of this financial accounting system. This would include all of the Tribal agencies, community action programs and other contracting agents receiving Indian education money. Further, we recommend the establishment of a national body which would process such reports and summarize them into geographical areas for the purpose of determining a reasonable estimate of the amount of dollars being spent on education per pupil in any specific geographical area. It is not possible under the existing methods to control overall expenditures of these agencies without implementing a standard reporting system. This duty could be assigned to the now existing National Center for Educational Statistics. We conclude that no concrete, conclusive, or positive statements can be made regarding the impact of educational dollars going into Indian Education without first determining how many dollars are being spent per pupil by function.

We further conclude that:

1. There must be a point of diminishing return for per pupil expenditures for basic educational costs.
2. There must be a definite maximum expenditure which is subject to management standards that can be evaluated by acceptable uniform education standards and principles. This would then ensure that a quality education is being provided.

In our interviews and discussions with superintendents, business managers, board members, and other accounting personnel, a general consensus was that Indian Education was not getting its fair share of the educational dollars being expended at both the state and federal levels. This general viewpoint could not be conclusively supported by financial information on a comparative basis.

The present reporting formats must be standardized so that sufficient facts can be determined on a per pupil basis to either support or refute similar statements when they arise. The most significant problem to be encountered in implementing a standardized reporting system would be compliance with the various state legal requirements for reporting financial information to the states. Most states usually require an exhibit of good custodial care of funds and require at least an indication from which fund an expense was paid, what was purchased and why it was purchased. We did not find it extremely difficult, as indicated in our exhibit on "Expenditures by Function," to reclassify financial data taken from the LEAs existing financial statements into the broad functions mentioned above. From this information, we were then able to make some reasonable judgment on the impact that various programs have had on Indian Education. These conclusions and recommendations are included under separate sections of the applicable laws studied. The feasibility of converting to a standardized system of reporting by eligible educational agencies and the difficulty of satisfying both state and federal requirements is beyond the scope of this particular study. It is therefore, strongly recommended that the United States Office of Education and the BIA work hand-in-hand in a project which would allow educational agencies to standardize reporting. Conversion would not be a difficult task since most states have existing systems which already have a correlation with the functions as set forth in the handbook.

The standardized accounting and per pupil expenditure discussion can be put in another perspective by a comparison of one of the LEAs the teams visited with the local BIA school system.

In examining other completed studies regarding the federal funding of Indian Education, it becomes apparent that when you compare the public school system to the BIA schools, the public school system is apparently providing more efficient education on a per pupil expenditure basis. Recent studies have placed per pupil expenditures in BIA schools at $1,949. This is $100 to $900 more than any public school reviewed in the study.

However, when looked at on a local basis, the per pupil expenditure total changes drastically. In a fiscal and management review of the local BIA agency serving the area of LEA 13, a close examination of the records on BIA schools shows that the average per pupil expenditure is approximately $900. When other factors such as food costs are removed the per pupil expenditure goes down to around $700, which is about the same as the review gives for LEA 13, and well below the national average of $1,052.[1/] These figures are approximate because of the difficulty of comparing expenditures across different school systems, but they show actual BIA expenditures per pupil to be well below figures quoted by other studies. Since the per pupil expenditure of BIA schools at the local level is at least $1000 below the supposed appropriation of $1,900, the question to be asked is what happens to the rest of the money? It would seem appropriate to ask for a study of the BIA education system at every level. To support this conclusion a quote from the above cited review is appropriate:

> "The adjusted per-pupil expenditures for the BIA schools are not adequate in comparison with the other averages shown, the instructional program budget is well below the national average and not sufficient to meet the special needs of Indian children."[2/]

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[1] Occupation of Wounded Knee: Appendix to Hearings Before the Subcommittee on Indian Affairs (U.S. Gov't. Printing Office, Washington, D. C., 1974), pp. 455-461.

[2] Ibid., p. 457.

A further conclusion is that for true educational reform for Indian children, Indian people must be given the choice of ways to achieve control over the educational system, whether in BIA contract schools, public schools, Tribal schools, etc. The public school system can be controlled by electing Indian representation to public school boards on the reservation. We found that the trend towards Indian representation and control on such school boards has already begun and, where sufficient Indian personnel were present to take over the strong management roles and responsibilities that are needed to run a school district, Indian personnel were actively involved in school board affairs. There were two or three cases where Indian people were controlling the school board and setting effective policies for the education of their children. Discussion of various financial matters with these people showed clearly they have a grasp of the situation and the magnitude of their responsibilities. They believe they are providing quality education with the available funds.

A few LEA administrators did not support the concept of contracting Indian Education money directly to a Tribal or parent organization to run their school systems. There is a valid policy question whether all Indian money should be contracted directly with Tribal organizations, parent organizations, and other eligible educational agencies. A gradual phase-over within a definite period of time is favored by some. The basic question is whether mandated parental involvement in specific situations could erode the vested authority of elected board members. In districts where the majority of the school board was not of Indian descent this may be the only true assurance of guaranteed input. Irrespective of the agency which is to receive money, it would not be in the interest of the public taxpayer nor the Indian agency administering the funds to not be held fully accountable for such money. In fact, there is a strong case for reporting standardization in this particular situation since it becomes more important to monitor and evaluate the performance of such a concept.

In concluding this general fiscal summary, we are stressing that standardization and cost accounting of various educational programs in a geographical area must be implemented so that a fiscally responsive basis is provided to establish bench marks of program delivery and goals. In Indian Education, we have arrived at the threshold of such accountability.

Public Law 874 - Impact Aid

Support received from this law is the bread and butter of Indian Education. Without the assistance from P. L. 874 for general operations, the public school system would not exist on the reservations and other federal sources would need to be increased to take over the educational burden created. Because the P. L. 874 calculation is made by the state, unless otherwise negotiated by the LEA with the state, the LEA receives the rate determined by the applicable state.

The regulations provide the means by which the Chief State School Officer is to make the calculation. The Commissioner of Education, Superintendent of Public Instruction, or similar person determines which school districts within the state are generally acceptable for comparable computations. Once a selection is made, he then computes the per pupil amount derived from local sources in the district selected for comparison. This amount is compared to the effort of the LEA applying for P. L. 874 funds. If, in the judgment of the Commissioner, the current expenditures in the school districts selected are not reasonably comparable to those of the P. L. 874 applicant because of unusual geographical factors which affect the current expenditures necessary to maintain the applicant LEA, he may adjust the rate so as to provide the LEA with a level of education equivalent to that maintained in such other districts.

This section of the regulations provides for the local administrators to negotiate the rate with the State Commissioner. We conclude that (1) the local administrators were not aware of or familiar with the regulations as they pertain to obtaining an increased contribution rate because of unusual geographical factors and (2) the states in many cases did not make administrators aware of this regulation and did not encourage them to seek a greater contribution rate to provide them with operating funds commensurate with those of other LEAs in the state.

The regulations do not provide for circumstances other than those related to unusual geographical factors.

Additional needs -- such as providing housing for teachers; special programs for gifted, retarded, handicapped, emotionally disturbed, cultural differences and learning disabilities -- are not considered. Unless the districts selected for calculation purposes have such programs in existence and financed by local sources, the P. L. 874 applicant does not receive funds to support such programs unless they are negotiated for with the State Commissioner. We found only one LEA where the administrators had successfully negotiated with the State Commissioner for additional P. L. 874 money to meet the needs resulting from geographical factors. In no LEA did they negotiate for funds to meet any of the special needs of Indian children. In fact, no administrators were aware that the rate could be negotiated. As a result, the school districts were receiving funds based upon districts which were determined to be comparable, but were not. Since the State Commissioners are hard pressed to find comparable school districts with similar geographical factors, the LEA serving Indian children must spend a greater portion of its funds on expenditures related to transportation, housing and plant maintenance at the expense of regular program expenditures. This fact is borne out by the schedule of expenditures by function by site as indicated elsewhere in this report. (See Appendix III).

The P. L. 874 calculation, through various changes in the formula, can provide an effective means by which Indian children can receive education which is at a level commensurate with that experienced in other school districts within the state. We recommend the following two changes in the existing regulations which would significantly help Indian children receive an equitable education.

- Calculation of the rate at a national level using other reservations in lieu of districts within the state as criteria for determining comparable school districts.
- Standardized reporting by function which would provide information as to expenditures presently being made to meet the special needs of Indian children and provide a basis from which calculations can be made for providing special needs not previously funded.

Calculation of the rate on a national level would provide funds at least comparable to expenditures incurred by other reservations. We found excellent examples where reservations could be compared on a reservation-by-reservation basis when geographical factors were very similar. Had the P. L. 874 calculation been made using other reservations outside of the applicable states, certain LEAs would have been spending significantly more money on regular programs and less on expenditures resulting from geographical factors. If the Indian children are to receive education at an expenditure level that other children are receiving within a state, the LEA must be compared with another comparable reservation within the state or other comparable reservations located outside of the state; failing this the LEA must negotiate a higher contribution rate so that comparable expenditures can be made for regular programs. USOE needs to publish and disseminate acceptable procedures regarding the negotiations process.

Through standardized reporting by function, the P. L. 874 contribution rate could be varied to meet the special needs of Indian children and to provide feedback on a per pupil basis as to expenditures made for special programs. In addition, the rate could be varied to provide funds comparable to expenditures made by other LEAs within or out of state for supporting services to ensure that sufficient funds are available to meet the needs resulting from geographical factors. After considering the state's contribution to the LEA, varying the P. L. 874 contribution rate based upon financial information received in a standardized reporting format by function on a reservation-by-reservation basis offers the greatest opportunity to provide Indians with programs at an expenditure level experienced by all other citizens.

Public Law 815 - Impact Aid

This law is generally referred to among the LEAs as the companion legislation to P. L. 874. Whereas P. L. 874 provides funds for maintenance and operational costs to schools in federally impacted areas, P. L. 815 provides for construction of educational facilities.

Public schools located on Indian reservations are required to submit applications to the United States Office of Education. These are reviewed and priority ratings are given each application.

There are several current conditions that drastically affect the more rural school systems. First, these school systems are placed on a competitive basis with all other federally impacted school systems. Military bases in United States territories, disaster areas, and others have seemingly been given a higher priority. Second, Congress has within the past several years held the appropriations under this authorization to a bare minimum, thus creating a substantial backlog of applications. A more concise review of P. L. 815 and the most up-to-date needs assessment for public schools educating Indian children is available in the "Public School Survey of Construction Aid Needs Related to the Education of Reservation Indian Children," prepared under BIA contract #14-20-0150-1122 by the National Indian Training and Research Center, Tempe, Arizona. An additional source is a modification to the report submitted by Dr. Wayne Pratt regarding the Window Rock Public School District No. 8, Fort Defiance, Arizona.

Johnson-O'Malley

Johnson-O'Malley programs at the various sites became the focus of the most frustrating part of our study. In the mandate as specified by the Committee on Interior and Insular Affairs, the report asked that the study include an evaluation of the Johnson-O'Malley distribution formula. At each of the locations, we searched for answers to this particular formula. After the site visitations, these conclusions became apparent:

- There was not conclusive evidence that a distribution formula existed.

- Where a semblance of a formula did exist, it either did not provide for any equitable distribution of funds or it was not being implemented.
- Under existing financial information reporting, it is not possible to compute an equitable distribution formula.

Before attempting to develop an equitable distribution formula, a great deal of effort would need to be exerted to more clearly define the variables within this formula. By definition, to formulate, one must be able to put into a formula systematized information. There must be an attachment to, or reliance on, certain information being accumulated. BIA is unable to do this under existing circumstances. No information is presently being accumulated at the national, regional, or local level which would provide the various levels with information which would enable administrators to formulate special needs. In addition, there are two needs for which the existing Johnson-O'Malley regulations provide. One situation where the need may arise is where evidence is shown of a reasonable tax effort and where all other receipts from the district are considered and the school district has still not been able to provide basic education for Indian children. There is also contracting for meeting special educational needs under extraordinary or exceptional circumstances. If need is to be the basis for the formula calculations, then there is no source of information on a national basis which would provide a basis for equitable distribution from the national level down to the state and local level.

Numerous examples were found where the LEAs have demonstrated that, in the absence of Johnson-O'Malley basic support money, the school district could not even meet the basic foundation programs for the education of Indian children. There is some serious question as to why the LEAs relied so heavily on Johnson-O'Malley for basic support money. However, excluding that fact, the needs were communicated to the Area Office of the BIA far in advance of the allocation of resources. For various reasons, such needs were never met. As a result, in two cases the school districts incurred substantial deficits on the basis of receiving an oral commitment from the Area Office as to the funding level, only to find out after the school year had ended that they would not receive any Johnson-O'Malley basic support money.

These deficits must be financed somehow. The alternatives are bleak, for in these two cases, the school districts will either need to make a special assessment on the local level or receive some emergency funding from either the state or the federal government. This could be justified by the BIA on the basis that the funds were not available. However, it is difficult to rationalize how BIA can finance some programs which have been used for extravagant purposes which seem far beyond the meaning of extraordinary or exceptional circumstances.

For instance, in one particular case the BIA refused to contract with a state to provide funding for boarding school students attending public schools. It can be argued, consistent with the premise that the states have primary responsibility for the education of all students, that this was the state's responsibility to begin with. But on the other hand, the BIA contracted for a 90-day all-expense-paid trip to Europe. It should be noted, however, that the Bureau is attempting to implement a policy of self-determination. The trip was a priority of a local Johnson-O'Malley committee. Yet this seems difficult to justify when some Indian students are not being provided a basic support program.

The irony of Johnson-O'Malley funding is that, of the total educational dollars which BIA receives from Congressional funding, Johnson-O'Malley represents less than seven percent. Yet this program provides the most inequities. It is the oldest of all federal programs directed toward improving the educational opportunities of American Indians, yet it is a program which most Indian people do not completely understand. This lack of understanding stems in part from the evolutionary changes in the administration of the program. These changes coincide with the advent of other federal legislation directed intentionally or inadvertently to improve educational opportunities for American Indians.

The change in the character of Johnson-O'Malley funds usage has evolved from direct tuition payments to general fund subsidy to categorical assistance for special needs. These changes have mandated contractual modifications. School systems are confronted with a period in their history where fiscal accountability is demanded. The contractual mechanisms to insure accountability have not kept pace with the demands of our public. The BIA needs to establish a standardized contractual procedure to ensure that services for eligible recipients are delivered according to contract specifications.

In addition, Johnson-O'Malley funds have been included in a new budgetary process known as "band analysis". This method of allocation is based on the relative priority an Indian Tribe assigns to Johnson-O'Malley as viewed against all other Tribal programs. Because "band analysis" permits the Tribe to determine relative priorities, it is possible that Johnson-O'Malley could be reduced since it is not directly related to Tribal interests. This process has not been completely assimilated by Indian Tribes. The seriousness of reduction of given programs by those persons reviewing and establishing Tribal priorities has yet to be felt. The Congressional Record, Vol. 120, No. 95, June 27, 1974 provides a more detailed analysis of the "band analysis" process and the effect it has on several states.

An available direction to pursue would be to transfer control of Johnson-O'Malley funding into the Department of Health, Education and Welfare. If this were to be seriously considered, the administrative and programmatic functions need to be clearly defined and an understandable accountability system explained to all levels of management as the program cascades down to local levels.

It is conceivable that Johnson-O'Malley funds could be administered by the same office which administers P. L. 92-318 Title IV funds. This would:

- Consolidate all federal education funds under one agency for the purpose of providing elementary and secondary public education for American Indians.
- Facilitate elimination of duplicative efforts through concentrated efforts of planning, monitoring, evaluating and/or controlling expenditures to meet the special needs of Indian children.

If Johnson-O'Malley funds were to be continued under BIA administrative auspices, a standard reporting system is strongly recommended. Existing formats for reporting are totally inadequate to effectively evaluate programs and program delivery. Further Johnson-O'Malley findings have been set forth on a per-LEA basis in Appendix III A.

Title IV

All of the LEAs that the review team visited had received Title IV funding under the Indian Education Act. The administration and implementation of program delivery for this particular Act is in its infant stage and has certainly not been subjected to the various revisions of rules and regulations as the Title I program has been since its inception in 1965. But, based upon our review of this program and its delivery, the fiscal team concludes that the Title IV regulations must be significantly revised to define more clearly the direction that Title IV programs should take.

At this particular time, many of the LEAs have used Title IV funding for support of basic educational programs. It becomes apparent that Title IV funding has been used for programs not within the intent of the original law. Our findings indicate that the LEAs were suddenly confronted with additional money which needed to be spent and they were quick to establish a need, irrespective of the existing rules and regulations. They proceeded to implement programs which, in the vast majority of cases, were clearly basic support programs and should have been funded by the local, state and county revenue sources.

Title IV funding had some bright spots in a couple of the LEAs we visited and there was a clear indication that Title IV could find its place for meeting the specific, special needs of Indians. This would be particularly true in urban areas where we found that existing conditions prohibited certain Indian children from being served. For example, one urban area visited had a significant number of Indian children in the particular location. However, because of the lack of other minorities in the same area, they were not considered an attendance area and were therefore not being served by any Title I program, although there did appear to be a significant need for such a program. Title IV funding for this specific area could have been used to support a program which would be similar in content to the existing Title I programs. This appears to be a clear example of where Title IV funding could play a significant role in meeting the special needs of urban Indians.

Title IV funding on reservations has provided many of the same programs which Johnson-O'Malley funding has been directed towards. There are a number of good examples of two federal agencies providing overlapping programs. Title IV rules and regulations should be amended to more clearly define what direction Title IV projects should take. Duplication that now exists between contracts awarded under Johnson-O'Malley and projects approved under Title IV should be terminated.

It is important to note here that duplication does not necessarily mean overload or waste of money. Often districts which Indian children live in do not provide an adequate basic support program and do not meet special or extraordinary needs. Thus any extra money that comes in is used to supply the balance needed to make up the basic support.

A formula must be devised to assure that an adequate amount of money is provided so that each Indian student receives the educational services he or she needs.

Adoption of reporting standards in accordance with the financial accounting handbook "Standard Terminology for Local School Systems" should be implemented so that information can be gathered which will provide for expenditure criteria on a per pupil basis by functions of instruction, supporting services and community service.

Examples of findings which support our conclusion that funds are being expended for basic support programs follow in Appendix III A.

Elementary and Secondary Education Act - Title I

Title I programs have been the topic of educational discussion since enactment of ESEA in 1965. The fiscal team found many of the same programmatic inconsistencies here that have been found in other areas. Through the years the rules and regulations have been revised many times. The administrators at the local level are generally familar with the regulations and are in reasonable compliance.

Two of the most significant conclusions of our Title I review are:

- SEAs are not providing the necessary technical assistance and training to the LEAs on reservations or in rural areas.
- Public schools in reservation areas with substantial numbers of disadvantaged students are being penalized by being forced by the SEAs to identify only a portion of the total disadvantaged population as the target group under Title I.

Since 1964, SEA's have received $380 million for planning and evaluating ESEA programs. Each state gets from five to seven and one-half percent of the total state allocation for administering Title I, Title II and Title III funds. In addition, each State Commissioner is allowed to take 15 percent of such funds off the top for discretionary programs. No LEA which we reviewed was receiving any benefits from the state in the form of technical assistance. Only two of the administrators were aware that the SEA had been allocated funds to provide the LEA with technical assistance in planning and evaluating programs. It is a melancholy commentary to see that the LEAs that need this planning and evaluation assistance and training the most are not receiving any of the benefits of this administrative money received by the applicable states. Not one case could be found where the state provided or funded any program under the 15 percent discretionary funds provided the State Commissioner.

A determination of the exact cause for the existence of this situation was not made. In any event, it is obvious that lack of appropriate communication or commitment to support projects is being fostered. SEAs should not be immune to accountability, for it is the public's finances which are not being utilized in the manner for which they were allocated. Advance payment for services which are totally or even partially neglected cannot be tolerated. This is another facet of governmental responsiblity in terms of administrative accountability. We would have to conclude that the state must be held accountable not only for the funds but for the performance of this task on an equitable basis to all LEAs irrespective of location within the state.

Urban LEAs had less difficulty in meeting the comparability requirements than did LEAs on or near Indian reservations. The highlighted reasons for this variance are:

- Urban areas have greater opportunities for access to technicians, sophisticated data gathering, processing and reporting mechanisms for all areas of school accountability than do rural area schools. Thus, concentrated efforts should be directed toward assisting rural area schools in these endeavors.
- LEAs that had a joint or amalgamated BIA/public school system in operation tended to distort any comparability criteria since operating costs were joint or mixed with instructional and support costs provided by BIA. Ratios were subject to interpretation. Again this type of arrangement was found mostly on reservations.

- Thus, we recommend that the comparability requirement be eliminated for rural or reservation areas where a joint BIA/public school system is in operation and/or require that the LEA furnish appropriate data acquired from the BIA to accurately determine comparability.

Carry-over funds from year to year created planning problems in efficient allocation of available resources for local administrators. Since this problem was apparent in both urban and rural areas, we recommend that LEAs be given blanket authorization to use such funds until completely exhausted by the LEAs. Such a procedure would give administrators immediate access to funds and would meet LEA needs on a timely basis. The other viable option would require more immediate action by Congress on appropriation bills. Failing this, we suggest a mandate to the states to authorize local districts to register warrants against the state's general treasury or educational revenue sharing monies until Congress can act on specific appropriations.

Given all the regulations in eligibility, comparability, reporting requirements, etc., we found that the Title I program was impacting the educational needs of Indian children in the rural and reservation areas; however, at the urban sites, Indian children were not receiving an adequate share of Title I funds to meet their special educational needs. This situation was apparently due to the fact that Indian students represent a minority of eligible participants in selected attendance areas. We recommend that increased funding be given to urban Indians and administratively earmarked to the educational needs of students from low-income familes. These additional funds could start addressing special educational needs not covered by Title IV - Indian Education Act funds for urban students.

SECTION IV: FINDINGS AND DISCUSSION

D. PROGRAM STUDY

Summary of Recommendations and Conclusions

Although we have studied each of the three programs (Title I, Title IV, and Johnson-O'Malley) in detail, the main conclusions to be drawn here are in regard to the three programs in combination, rather than separately. This does not depend on any conceptual framework, but on the empirical finding that there are more similarities than differences among the programs. There are some specific things to be said about Title I and Title IV, but not too much about JOM (which is in a sense intermediate between the other two) and these things will be touched upon. In general, though, the programs tend to lose their individual identities, while the groups involved with the programs, e.g. Indian PAC members and non-Indian administrators, retain their identities.

The most striking conclusion of the program study is that there is a woeful lack of knowledge about the programs on the part of the people most involved with them. This applies across the board: PAC members are poorly informed regarding the role of their own committee, administrators know little about the workings of the various PACs and about the details of how each program is implemented in the classroom, and even the teachers and teacher aides are not clear on how the programs function at their schools. This lack of necessary knowledge is corroborated by the low level of training that is reported, and our first recommendation is that there be a radical change, both quantitatively and qualitatively, in the area of training. In quantitative terms, this should involve an adequate budget for formal training for all involved groups. In qualitative terms, it should involve a two-way exchange between school staff and community people so that each learns from the other. (And LEA administrators, who would also be a part of this process, should enter as a third equal group, teaching what they have to teach and learning what they have to learn.)

That the three programs are viewed as one entity is shown by the associations among them in terms of program success. If one program is seen as being good, then the others tend to also be seen as good; conversely, if one is rated as unsuccessful, then the others tend to receive the same rating. A possible explanation of this would be that the ratings actually apply more to the general educational program than to any particular supplemental program. In this event the programs would be overlapping but would at least all be manifestations of educational success in terms of Indian needs and goals.

Unfortunately, this is not the case. Program success is related only weakly to general educational success or to relevance of the general program to Indian need. Thus, not only is there overlap, and presumably confusion among the supplemental programs, but the area of overlap does not even center on the issue of education. It is necessary to define the goals of Indian Education and to relate the specific programs to these goals. Furthermore, it turns out that non-Indian administrators and teachers see the general program as being more relevant than the Indian groups see it. There must be an ongoing dialogue between community and staff as to what constitutes relevance.

Some light is cast on the relevance, or irrelevance, question by looking at the relationship between program success and classroom emphasis. Among Indians, program success is most strongly related to emphasis on traditional subject matter. Emphasis on miscellaneous services, e.g. counseling, is second in importance, and emphasis on Indian-related subject matter is a dismal third. These results hold for all three supplemental programs. Again, we see that the overlap among the programs must be excessive. We take it as given that Indians are interested in having their children learn Indian history and culture and, at least in reservation settings, language. We recommend then that one program be used exclusively for the teaching of Indian subject matter. For reasons to be discussed later, we feel that Title IV is the appropriate program for this purpose.

But why is it that all programs are currently gauged in terms of traditional subject matter? Many reasons can be advanced, of which the following two seem most important.

First, the schools are failing to adequately teach this material, and so it remains crucial to the extent that any program seems successful if it helps children learn to read, write and do arithmetic. This intolerable situation goes back to the issues of a basic curriculum, basic support for such a curriculum, and the use of supplementary funding to plug holes in that basic support. A basic education must be provided through adequate basic support funding. To the extent that state and local taxes in conjunction with federal funding through such sources as P. L. 874 cannot provide this, compensatory programs such as Title I must complete the job. We recommend that school districts be prohibited, either through legislative action or administrative regulations, from using programs such as Title IV to finance basic educational needs that are shared equally by Indian children and non-Indian children.

The second reason for traditional emphasis being of prime importance is that Indian-related subject matter seems to lend itself to different interpretations. As with "relevance", non-Indians think there is more of it than do Indians. In particular, Indian teachers, who should be in the best position to evaluate this, see much less emphasis on Indian-related subject matter than do non-Indian administrators and teachers. More input is needed from the Indian community, particularly from the Indian teachers and teacher aides, in the process of constructing an Indian-related curriculum.

Among PAC activities and functions, interaction with other PACs seems to be a critical variable. First, it is strongly related, at least for Title IV and Johnson-O'Malley, to program success. Second, it is strongly related to other functions, e.g. policy formulation and program control, that are themselves indicative of a successful program. Third, it is currently at an unsatisfactory level. The findings indicate that, while two PACs have occasional joint meetings, there is no effort made to bring all three PACs together for overall coordination of the various programs. This situation is of course related to the problems of training, overlap, etc. discussed above. The PACs constitute the primary source of community input to the programs. If their energy is diffused in three directions, there is little hope of transforming the separate programs into a coherent and relevant general educational program. We strongly recommend that the three PACs coordinate their efforts on a formal basis. The best mechanism for this would probably be the formation of a higher-level PAC (at least for Title IV and Johnson-O'Malley, although representatives from this combined PAC could be selected to coordinate activities with Title I), with sub-committees to attend to the details of the separate programs. All of this of course requires resources, without which control becomes a hypothetical issue. The budget for PAC activities should be expanded to provide for at least one staff person and to enable the PAC to hire the services of professional consultants.

In terms of individual programs, both Title I and Title IV exhibit interesting patterns. Title I is the only program which is considered more successful by non-Indians than by Indians. Also, the non-Indian group sees Title I as most closely related to general program relevance; this is not true for the Indian group. The conclusion here is the obvious one that Title I is not an Indian-oriented program and should not be used as such. In regard to Title I PACs, non-Indian members report more knowledge of the program, better training and more interaction with the local community. (Indian members report a much higher success level for the general educational program, relative both to non-Indians on the Title I PACs and to Indian members of other PACs; this suggests that these parents may not have the same educational goals as the other groups). We recommend that Indian energy, in terms of local educational control, be focused on the other supplemental programs, and that Title I be used as a general compensatory program consistent with the goal of providing a basic education to all children.

Title IV, on the other hand, emerges as the best vehicle for Indian input and control. It is most closely related to general educational success in terms of Indian needs, and its success or failure is most closely related to both classroom emphasis and PAC activities. We conclude that Title IV provides the best structural framework for implementing specifically Indian educational goals and needs.

It should also be noted that Title IV has only been in operation for one full year, so that its success level and its relationship to the general program are particularly promising. *Title IV should be expanded and strengthened, so as to form the primary focus for Indian input and control.*

The Johnson-O'Malley program shows the greatest emphasis on miscellaneous services. *We recommend that, with Title I serving a compensatory role and Title IV a supplemental academic role, Johnson-O'Malley should continue to serve broader needs, and not necessarily be limited to instructional purposes.*

All of the above discussion is in terms of the educational community as an isolated system. Our study of the business community which serves to situate this system, shows a strong recognition of the need for special Indian educational programs, and an equally strong dissatisfaction with the existing school program as a whole, both as it affects Indian students and as it affects all students. Furthermore, these opinions are shared equally by Indian businessmen and by non-Indian businessmen. We conclude that the business community (at least in our sample) sees the basic educational program as inadequate and thus sees the need for both changes in the basic program and for special programs for Indian children. This would lead us to further conclude that the polarization of goals between Indians and non-Indians is more of a bureaucratic problem than a basic attitudinal problem.

Our final broad area of interest is with geographical differences in program implementation and success between urban and rural sites. At the urban sites, special programs are seen as more successful and PAC functioning as more developed (except for interaction among the PACs, which is greater at the rural sites). The urban business community sees the overall educational program as less successful and the need for special Indian programs as greater than do the rural counterparts. One conclusion to be drawn from this is that the educational problems of urban Indians are different, and that this must be kept in mind when making any program recommendations. We therefore recommend that in all areas of policy- and decision-making in regard to Indian Education that USOE keep in mind the unique needs of urban Indians.

Methods

Our instruments, the EDCQ and the PACQ in particular, are lengthy and extensive. Rather than dealing with all questionnaire items, which would be too cumbersome, or selecting key items for analysis, which would involve the loss of too much information, we used the technique of scaling. Scaling is the summing of scores on similar items to produce a summary score for a particular topic. (See Appendix IV A for details of scaling procedure). This has the dual advantage of reducing the amount of data to be analyzed while providing more reliable scores. It has the disadvantage of masking certain specific information, e.g., information relating to particular questions of legal compliance.

Since we are focusing on the Indian segment of our sample and are concerned with comparisons among different role-groups, e.g., PAC members, administrators, teachers, we have divided the samples into groups that are based on both of these criteria. (The alternative is to investigate the joint effects of role and race by such means as two-way analysis of variance. This approach was rejected due to statistical problems arising from the small number of Indian professionals in the school system). The particular division of the sample into sub-groups for each questionnaire is detailed below. Having arrived at, for each questionnaire, scale scores or summary measures for each respondent, and having split each sample into distinct sub-groups, we then analyzed the data in five different ways. Each of the five methods was used to provide a certain kind of information.

1. Knowledgeability is a prime concern, since a program cannot be successful if it is not understood by the people involved with it. While we get at this question directly in the PACQ, we also look at it in terms of missing data, measured for each scale for each sub-group of subjects.
2. Also of prime concern is the general lack of success, or of favorable opinion. All scale scores have been adjusted to a range of 0-99, so that a mean score can be immediately interpreted as a percentage of favorable responses.
3. A third area of interest is that of comparing scores for different sub-groups to identify areas of consensus and of disagreement. In addition to simply presenting mean scores for sub-groups, we have subjected the scores to analysis of variance and t-testing to highlight the critical differences of opinion among the sub-groups.
4. We are also interested in differences among the three supplemental programs. This has been studied by means of matched-sample t-testing to get at differences of opinion, e.g., among Indian PAC

members on the relative success of the three programs.

5. The final main area of analysis is that of associational effects. We would like to know, for instance, which facets of PAC operation are most closely related to program success. To answer this sort of question, we have employed correlational analysis, including multiple regression.

Sampling Problems

Certain difficulties that arose in the course of analysis, particularly with the PACQ, are mentioned in the appropriate sub-sections below. However, two general sampling problems which should be noted at the outset are those of sample size and sample distribution.

Sample sizes are generally smaller than usual for a study of this scope. They are too small for individual-site analysis to be appropriate, except for a few sites where a greater number of respondents were located. The sample is, however, sufficiently large to yield statistically stable results when used to define sub-groups across all sites.

This does not apply to the BCQ sample. The difficulty here is that at the rural sites--12 of the 15 sites--there is likely to be no business community in the usual sense of the term. Also, at many of the sites there was reluctance or refusal on the part of business community people to complete the BCQ.

The sample distribution problem, which arises from the necessity of combining sites, is that the samples differ considerably from site to site in racial composition and in distribution of role groups (administrators, PAC members, etc.). This leads to a statistical confounding of site with race and role. We do not believe that this is a serious problem, but it should be kept in mind when interpreting the findings. (See Appendix IV B for details of the sampling distribution.)

Both the size problem and the distribution problem are direct results of the timing of the study. Not only was the time-frame very short for a major data collection effort, but the timing was such that most of the data collection had to be done during the beginning of the summer. School-related respondents were, as might be expected, hard to find.

Discussion of Findings: Educational Content

Method

The EDCQ consists of 94 items dealing with the content, functioning and success of the three supplemental programs and of the general educational program. These items have been condensed into 19 scales. Most of the questionnaire items are tied into one of the three programs with those items comprising the PREL scale being the main exception. For program success scales and program emphasis scales, the programs have been kept separate. For teacher training scales and program success factor scales, a preliminary analysis indicated that there would be no loss of information if the three programs were considered together. Consequently this combining was done.

Scale	No. of Items	Descriptive Name
1 - PSUCI	2	Program success, Title I
2 - PSUCV	2	Program success, Title IV
3 - PSUCJ	2	Program success, JOM
4 - PREL	4	Program relevance to Indian needs
5 - TT/IR	12	Teacher training, Indian-related
6 - TT/GEN	27	Teacher training, general
7 - TEMSMI	3	Program emphasis on traditional subject matter, Title I
8 - PEMMII	2	Program emphasis on miscellaneous services
9 - PEMIRI	2	Program emphasis on Indian-related subjects
10 - PEMSMV	3	Program emphasis on traditional subject matter, Title IV
11 - PEMMIV	2	Program emphasis on miscellaneous services
12 - PEMIRV	2	Program emphasis on Indian-related subjects
13 - PEMSMJ	3	Program emphasis on traditional subject matter, JOM
14 - JEMMIJ	2	Program emphasis on miscellaneous services
15 - PEMIRJ	2	Program emphasis on Indian-related subjects
16 - PSFADM	3	Administrators as a program success factor
17 - PSFPAC	3	PACs as a program success factor
18 - PSFTCH	6	Teachers as a program success factor
19 - PSFFAM	6	Family involvement as a program success factor

Subjects were placed in five groups, defined as follows:

Group 1:	Indian PAC members	61
Group 2:	Non-Indian administrators	52
Group 3:	Non-Indian teachers	110
Group 4:	Indian teachers (& teacher aides)	81
Group 5:	Indian students	31
	Total sample	N = 335

It should be noted here that Group 5 of Indian students includes 15 from LEA 5 and five from LEA 6 which are both in the same state. This shows a preponderant influence from one site and one state. Again, because of the timing of the study, after school was out, students were hard to find.

There are not enough non-Indian PAC members, Indian administrators, or non-Indian students to form groups, so these subjects have been deleted from the sample. Community aides and parents without other roles have also been deleted. Teacher aides are included with teachers and this combined group is referred to as "teachers". (This applies only to the Indian group; there are no non-Indian teacher aides in the sample.) For some purposes, groups 1, 4 and 5 have been combined to form a total Indian sample of 173 subjects, and groups 2 and 3 have been combined to form a total non-Indian sample of 162 subjects.

Results[1]

Knowledgeability. As an indicator of knowledgeability we consider the missing data rates for each of the five sample groups on the two teacher training questions. These rates, which are not unrepresentative relative to other scales, are shown below:

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[1] Bar graphs, summarizing the main empirical findings from the EDCQ, are to be found at the end of this section.

	Group				
Scale	1	2	3	4	5
TT/IR	46%	15%	25%	44%	52%
TT/GEN	30%	6%	12%	32%	26%

(Note that these scales contain items relating to each of the three programs. Since a respondent is missing a score on a scale only if he fails to respond to any item in that scale, these results are particularly striking.) The first observation here is that these missing response rates are high, since teacher training should be known to all people involved in the program. More important is that less is known about Indian-related teacher training, a subject that should be of concern to, for instance, Indian PAC members in programs using non-Indian teachers. Note also that, if the results are valid, Indian teachers know less than non-Indian teachers do about teacher training for Indian programs.

Program Success. Program success mean scores are shown below for each group and for each of the three programs:

Scale	Group 1	2	3	4	5	Significant Difference
PSUCI	67	79	69	64	56	2 > 3, 4, 5
PSUCV	69	65	55	66	38	1, 4 > 3, 5
PSUCJ	70	68	67	67	78	none

Included also are those comparisons for which the difference in means is statistically significant ($p < .05$). For Title I programs, the non-Indian administrators show the greatest approval, a finding which may or may not be related to educational goals. Title IV programs find their greatest favor in the eyes of the Indian PAC members, and, except for the very low scores for the Indian student group[2], are least approved of by the non-Indian teachers. With Johnson-O'Malley, there are no significant differences among the groups, although it is interesting that the Indian students approve so highly of Johnson-O'Malley. This may be due to the various non-academic uses of Johnson-O'Malley funds.

For the combined Indian sample, Johnson-O'Malley is considered the most successful of the three programs, having a significantly higher rating than either Title I or Title IV (as determined from matched-sample t-tests). With the student group deleted, no such differences would exist. The important point here may be that Title IV does not rate lower than the other two in view of the short time that Title IV has been in existence. It may be said that it is quite successful. For the combined non-Indian sample, both Title I and Johnson-O'Malley receive significantly higher ratings than Title IV.

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[2] See above note on student group distribution.

The correlation coefficients among the program success scales are as follows:

Scales	r for Indians	r for non-Indians
PSUCI and PSUCV	.66	.41
PSUCI and PSUCJ	.54	.48
PSUCV and PSUCJ	.73	.50

These coefficients are quite high, and suggest that the three programs are possibly viewed as one, which in turn suggests some overlap among the programs. The effect is less pronounced for the non-Indian sample.

Multiple regressions for predicting program success from various sets of related scales have been performed. Results are shown in the following table for predicting program success from program emphasis scales (see table on following page). The multiple correlation coefficients are higher for the Indian sample, and are higher for Title IV for both samples. The latter finding suggests that Title IV is better defined than the other programs. It is interesting to note that for the Indian sample the beta weights are ordered in

	Indians						Non-Indians					
	Title I		Title IV		JOM		Title I		Title IV		JOM	
Predictor	r	β	r	β	r	β	r	β	r	β	r	β
PEMSM	.38	.29	.63	.52	.42	.25	.19	.23	.33	.29	.06	-.15
PEMMI	.37	.22	.51	.22	.40	.19	.16	.22	.21	.01	.16	.23
PEMIR	.11	-.16	.44	-.02	.33	.11	.08	-.10	.35	.31	.14	.07
Multiple R	.42		.66		.47		.31		.45		.20	
Significant Level	$p < .05$		$p < .001$		$p < .01$		$p < .05$		$p < .05$		--	

the same way for the three programs. Traditional subject matter is most predictive of success. Miscellaneous services and Indian-related subject matter then follow. Emphasis on Indian matters in the classroom is apparently not a factor in program success. Although this finding could be caused by an absence of Indian-related subject matter, the schools' emphasis that Indian students either learn to read and write or learn Indian related matters is also significant. Promoting the idea that students cannot do both is doubtless a factor.

For the non-Indian sample, there is more differentiation among the programs. Looking at the beta weights again, we see that Title I is viewed in terms of traditional subject matter and miscellaneous services, Title IV in terms of subject matter, both traditional and Indian-related, and Johnson-O'Malley as purely a service program.

Program Relevance. The non-Indian groups uniformly see the educational program as being more relevant to Indian needs than do the Indian groups. This is shown by the following mean scores, with significant differences indicated ($p < .05$):

	Group					
Scale	1	2	3	4	5	Significant Differences
PREL	76	81	78	62	61	1 > 4; 2 > 4, 5; 3 > 4, 5

Particularly striking is the fact that non-Indian administrators and non-Indian teachers both consider the program more relevant than do the Indian teachers. Apparently there is some difference of opinion as to what constitutes relevance. This may be related to the finding, summarized in the following table, that the non-Indian sample sees less of a relationship between success of a particular program and general educational relevance, as measured by correlation coefficients.

Scale*	Indians	Non-Indians
PSUCI	.27	.22
PSUCV	.21	.07
PSUCJ	.30	.14

*Correlated with PREL

The highest of the three correlations for the non-Indians is with Title I success, indicating strongly that these people consider Indians to be one more segment of the generally disadvantaged rather than a distinct people with special educational needs.

Program Emphasis. We have already seen that the program emphasis scales are, for the Indian sample, highly related to program success. We have also noted that Indian-related subject matter seems to be the least important of the three emphasis areas. This is a puzzling finding. The following table shows the means on the Indian-related subject matter scales for groups 1 through 4 (there are not enough Indian students who responded to these items for this group to be included), and the significant group differences among these means. The differences among the groups is so pronounced (with Indian teachers seeing less emphasis in all three programs) that we might conclude that there is a serious lack of consensus on what constitutes "Indian-related subject matter". The other findings relating program emphasis to program success could then result from this failure to reach agreement on what is Indian-related and what is not.

Scale	Group 1	Group 2	Group 3	Group 4	Significant Differences
PEMIRI	62	55	41	37	1 > 3, 4
PEMIRV	69	76	82	66	3 > 1, 4
PEMIRJ	76	71	70	45	1, 2, 3 > 4

Geographical Differences. Of the 15 sites, 12 are rural and have a combined sample size of 270. At the three urban sites, there are 65 subjects. (Both of these samples include both non-Indians and Indians.) Means are shown below for success, relevance, teacher training and program emphasis scales. Johnson-O'Malley programs cannot be compared on this basis, since they do not exist at any of the urban sites.

Scale	Rural	Urban	Significance Level
PSUCI	67	77	$p < .01$
PSUCV	59	75	$p < .001$
PREL	72	74	--
TT/IR	27	19	$p < .01$
TT/GEN	40	36	--
PEMSMI	83	82	--
PEMMII	65	79	p .01
PEMIRI	45	38	--
PEMSMV	74	78	--
PEMMIV	75	85	$p < .05$
PEMIRV	74	66	--

The significant differences are in program success, Indian-related teacher training and program emphasis on miscellaneous services. Both programs are considered more successful in the urban areas. There is less teacher training in Indian subjects and more emphasis on miscellaneous services. The added emphasis on non-academic services seems to be at the expense of Indian subject matter, but the difference in these scales does not reach significant levels.

Discussion of Findings: Parent Advisory Councils

Method

The PACQ actually consists of three parallel and identical questionnaires--one for Title I, one for Title IV and one for Johnson-O'Malley. Aside from demographic information there is only one item, on general success of the local educational program, that is not specifically directed at one of the three programs. We have therefore carried out three separate and parallel analyses, one for each of the supplemental programs. The following 16 scales have been developed for each program:

Scale	No. of Items	Descriptive Name
KNOW	8	Knowledge (of law, regulations, guidelines, program, committee functions)
T/GEN	3	Training, general (amount and value)
ACT/PF	5	Committee activities, in the area of policy formulation
SCHINT	9	Interaction with school (board, administration, teachers)
CONTRL	3	Committee control, in regard to hiring and general
PACINT	2	Interaction with other PACs
SELECT	3	Indian community involvement in committee selection
MEET	3	Committee meetings (frequency and attendance)
PROPUB	2	Program publicity (public hearings)
PROSUC	13	Program success (in general and in terms of specific factors)
T/THEO	3	Training, theoretical
T/PRAC	5	Training, practical
DISSEM	4	Dissemination (PAC to community)
T/NEED	8	Need for training
HIRING	3	Hiring of program staff, validity of criteria used
EDSUC	1	Success of educational program, relative to Indian needs

The last scale, EDSUC, is based on the one general item mentioned above. The other 15 scales are all specific to Title I, Title IV and Johnson-O'Malley.

For each of the three questionnaires, subjects were placed in the following groups:

Group 1: The main sample, consisting of Indian PAC members of the program under consideration, i.e., for the Title I questionnaire, group 1 consists of Indian Title I PAC members.

Group 2: PAC-interaction sample, consisting of Indians not on the PAC under consideration, but on one or two of the other PACs.

Group 3: Comparison sample, consisting of non-Indian school staff (administrators, teachers, teacher aides).

Group 4: Special comparison sample, for Title I only, consisting of non-Indian members of the (Title I) PAC.

The following group sizes were obtained for the three programs:

	Title I	Title IV	JOM
Group 1	49	100	53
Group 2	107	56	48
Group 3	90	90	61
Group 4	53	--	--
Total analysis sample	299	246	162

Note that the total sample is the same for Title I and Title IV (except for the extra 53 non-Indian PAC members for Title I). It consists of the 156 Indian PAC members and the 90 non-Indian school staff people. For Johnson-O'Malley, the sample is smaller; this is due to the absence of Johnson-O'Malley programs at four of the sites.

The number of Indian PAC members is 156, while the total number of Indian PAC memberships is 202. Thus, the typical Indian PAC member belongs to 1.3 PACs. Stated differently, there is about a 30 percent overlap among the

PAC memberships. We have treated the memberships as independent samples when testing for significant differences among programs. This is not strictly correct but leads to conservative estimates of significance.

There are difficulties involved in comparing group 1 to either group 2 or group 3. The difficulties arise both from a reluctance on the part of various respondents to answer questions about programs with which they are not associated, and from the inapplicability of some items, and hence of some scales, to people not in the PAC under consideration. Different groups, then, will be compared only on scales for which the comparison is clearly meaningful.

Results[3]

Knowledgeability. There are two ways to gauge the degree of knowledge that PAC members have regarding their own committee functioning and their own program. One is by looking at the rate of missing data. This is most relevant for background scales, such as committee selection procedure, training, PAC interaction and dissemination (as opposed to goal-oriented scales such as control, hiring, etc.). The missing data rates are shown here, for group 1, for each of the three programs:

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[3] Bar graphs, summarizing the main empirical findings from the PACQ, are to be found at the end of this section.

Scale	Title I	Title IV	JOM
SELECT	49%	28%	36%
T/THEO	41%	52%	34%
T/PRAC	41%	52%	34%
PACINT	35%	36%	40%
DISSEM	24%	25%	26%

The main point to be made here is that these rates are high. The differences among them are secondary, compared to the general low level of knowledge. It should be pointed out, though, that Title IV looks poorest with respect to training. Non-response on these training items can mean either no training at all, or it can mean lack of understanding as to what was covered in the training. Both possibilities are equally disturbing. On the other hand, the Title IV people are clearest as to how they happen to be on the committee in the first place.

The other approach to gauging PAC member's knowledge is through the KNOW scale, which measures this directly. The means are shown here for this scale, for the three main groups of subjects and for each program. Significant differences listed are those for which $p < .05$.

	KNOW Means for:			Significant Differences
	Group 1	Group 2	Group 3	
Title I	59	16	42	1 > 3 > 2
Title IV	61	16	27	1 > 3 > 2
JOM	56	18	39	1 > 3 > 2

For each program, the Indian PAC members seem to be moderately well-informed, the non-Indian school staff much less informed and the Indian members of other PACs very poorly informed. We can also compare programs for a single group of subjects. The only significant differences here are that the non-Indian school staff knows much less about Title IV than about either of the other programs ($p < .001$ in each case). This may be due to the fact that Title IV has been funded for only a year.

Educational Success. The EDSUC scale is actually based on only one yes/no question, so that mean scores are immediately interpretable as the percentage of respondents who believe that the overall program is offering sufficient preparation for Indian students. The means for each Group 1 as well as for (the single) Group 3 are shown below:

Group	EDSUC Means
Group 1, Title I	84
Group 1, Title IV	55
Group 1, JOM	61
Group 3	46

It turns out that Title I PAC people have a significantly better opinion of the educational program than do Title IV people ($p < .001$) or Johnson-O'Malley people ($p < .05$). This is important in that the PAC members are not rating their own programs here, but are all rating the local educational program in general. We can conclude that the Indian Title I members have different criteria for educational success. Note that the non-Indian school staff have the lowest opinion of the educational program.

Program Success. The program success scales, PROSUC, are based on one overall program success item and a number of program-success-factor items; these scales, then, are not measuring quite the same thing that is being called program success in the EDCQ. The mean scores and significant differences ($p < .05$) are shown below.

	PROSUC Means For:			Significant Differences
	Group 1	Group 2	Group 3	
Title I	76	56	72	$2 < 1, 3$
Title IV	65	70	67	none
JOM	70	68	73	none

An interesting point that may cast some light on the preceding findings is that there are no significant differences here except on Title I success ratings. For that program, the "other" (non-Title I) PAC members have a significantly poorer opinion of Title I success relative to the Title I PAC members and to the non-Indian staff ($p < .01$ in both cases).

It is also of interest to look at the relationship between program success and overall educational success. The correlation coefficients, from the Group 1 data for each program, are 0.20 for Title I, 0.40 for Title IV and 0.18 for Johnson-O'Malley. Thus, the Indian PAC members on Title IV committees see their program as being more relevant, in a general sense, compared with the views of the other PACs about the relevance of their programs.

The correlates of program success are shown below, in terms of correlation coefficients between program success and other scales, again taken from data for Group 1 in each case.

	Correlation Coefficients for PROSUC		
Scale	Title I	Title IV	JOM
KNOW	-.14	.23	.55
T/GEN	-.04	.30	.28
ACT/PF	.45	.64	.19
SCHINT	.38	.54	.44
CONTRL	.22	.52	.01
PACINT	.01	.54	.44
SELECT	.18	.59	-.20
MEET	.09	.46	.07
PROPUB	.38	.32	.17
T/THEO	.04	-.10	.30
T/PRAC	.07	.18	.19
DISSEM	.18	.30	.17
HIRING	-.02	.28	.39

Success of Title I programs seems, in the view of the Indian PAC members involved, to be related most strongly to policy formulation activities, interaction with school staff and program publicity such as well-attended, advertised public hearings. Note that knowledge, interaction with other PACs and school staff hiring procedures do not seem to be relevant for Title I programs, but are relevant for the other two programs. For Johnson-O'Malley, the key factors leading to a successful program are knowledge, interaction with school staff, interaction with other PACs and school hiring procedures. Note that policy formulation and control seem to be relatively unimportant as determinants of program success. Title IV is noteworthy in having high correlations for most scales, indicating a generally tighter structure for Title IV programs, which in turn can be interpreted as a greater potential for success. Since program success is more related to general educational success for this program, Title IV can be considered as the best vehicle among the three programs for generally satisfying Indian educational needs.

Racial Differences on Title I PACs. For Title I, we have calculated scale means separately for Indian PAC members and for non-Indian members. The means are generally similar, and the results shown below are for those scales on which a significant difference does exist.

	Title I Mean Scores For:		
Scale	Group 1	Group 4	Significance Level
KNOW	59	79	$p < .001$
T/GEN	39	57	$p < .05$
DISSEM	43	55	$p < .05$
T/NEED	64	47	$p < .05$
EDSUC	84	59	$p < .05$

The two main differences are that the non-Indian members are more knowledgeable, and that they do not share the Indian members' elevated opinion of program success. The knowledgeability result seems to be attributable to the different opinions on general value of training received and on need for more training. The obvious conclusion is that Title I training programs are not designed with Indian needs in mind.

Geographical Differences. Mean scores are presented for rural and urban components of the Title IV Indian PAC members. The sample sizes are 76 for the rural group and 24 for the urban group. (Only Title IV is studied in this context since Group 1 for Title I is too small to be further sub-divided, and since none of the urban sites have a Johnson-O'Malley program.) As with the racial differences, only those scales for which the difference reaches statistical significance are shown.

Scale	Title IV Mean Scores For: Rural	Title IV Mean Scores For: Urban	Significance Level
KNOW	55	83	$p < .001$
ACT/PF	73	90	$p < .01$
CONTRL	40	63	$p < .01$
PACINT	52	27	$p < .05$
SELECT	66	85	$p < .05$
MEET	56	70	$p < .05$
PROPUB	61	82	$p < .05$

The main finding is that Title IV looks better in the cities. The committees are selected more representatively, have more frequent and/or better-attended meetings, engage more in policy formulation, know more about the program and have more control over it. The only aspect of PAC functioning that is better in the rural areas is interaction with other PACs. This can probably be attributed, at least partially, to a greater overlap among PAC memberships in the rural areas.

PAC Interactions. The PACINT scales are based on two questions, one each on whether the given PAC meets with each of the other two PACs. The mean scores, for Group 1, are 53 for Title I, 47 for Title IV and 50 for Johnson-O'Malley. By the nature of the scale, the three means must be related so it is not surprising that these means are about equal for the three programs. The general level of about 50 indicates that the average PAC meets occasionally with one other PAC, and not at all with the third PAC. Since the three programs seem to overlap in various ways, and since the PACs should be the primary vehicle for coordinating the three in terms of community needs (the LEA coordinating them on a more administrative and financial level), this general level of 50 is probably much lower than would be desirable.

The importance of PAC interaction is shown by the following correlation coefficients, relating PACINT to the more goal-oriented scales (based on Group 1 data). Interaction does not seem to increase knowledge, at least about one's own program, and has only a minor effect on hiring practices. It does, though, for most of the programs, go hand in hand with policy formulation activities, interaction with school staff and program control. And, for Title IV, it is strongly related to general educational success. We conclude that either the PACs should be merged or should be better coordinated and should meet on a regular basis.

	Correlations with PACINT		
Scale	Title I	Title IV	JOM
KNOW	.15	.05	.15
ACT/PF	.26	.59	.27
SCHINT	-.03	.59	.65
CONTRL	.66	.42	-.16
HIRING	.17	.22	.30
EDSUC	-.01	.60	.18

Discussion of Findings: Business Community

Method

The BCQ has been administered to those people at each site whom school personnel believed to be most representative of local attitudes toward education and most influential in determining local educational policy. The information that is elicited from these respondents is of two main types. First, there is the demographic information, including sociometric indicators and community involvement items. While this primarily consists of involvement with the school system, civic and religious organizations are also considered. The second type of information consists of attitudes and opinions related to education; the questionnaire items in this area deal mostly with Indian Education.

The following scales have been developed from the BCQ:

Scale	No. of Items	Descriptive Name
CIVORG	1	Involvement with civic organizations
RELORG	1	Involvement with religious organizations
SCHINV	11	Involvement with school system
SPECP	4	Need for special programs for Indians
PSUCA	1	Success of educational program for all students
PSUCI	1	Success of educational program for Indian students
AGRI	1	Need for agricultural programs for Indian secondary school students
VOCA	1	Need for vocational programs for Indian secondary school students
COLL	1	Need for college preparatory programs for Indian secondary school students

Only the school involvement and special program scales are multi-item scales. The others each consist of one dichotomous item, and are therefore analyzed in terms of contingency table analysis, rather than with the parametric technique used exclusively with the EDCQ and the PACQ.

The sample contains Indians and non-Indians, and contains different role-groups, but has not been sub-divided into groups as was done with the other two samples. Rather, it has been treated as a single sample that can be sliced different ways for different purposes.

Results

Sample Description. The sample consists of 211 respondents from the 15 sites. Of these, 60 are Indian and 151 are non-Indian. Geographically, 130 are from rural sites and 81 are from urban sites. In terms of profession, 16 are bankers, 24 clergymen, 52 executives, 14 educators, 21 skilled workers and 55 merchants. The remaining 29 are scattered among a variety of job categories. There are 162 men and 44 women in the sample. Five respondents did not identify their sex.

The demographic categories are distributed unevenly, both with respect to each other and with respect to sites. Since this serves to confound such apparently simple dichotomies as Indian-versus-non-Indian, findings should be treated as tentative, rather than definitive.

Indian and Non-Indian Profiles. Mean descriptions for the Indian and non-Indian portions of the sample are as follows:

	Indian	Non-Indian
Age ("3" for 31-40 "4" for 41-50)	3.5	3.5
Educational Attainment ("5" for high school graduate, "6" for some college, "7" for college graduate)	5.9	6.3
SCHINV (0-99 range)	36	32

The Indians and non-Indians are quite similar in these regards. Both groups can be characterized as early middle-aged, having attended but not graduated from college. They are moderately involved with the local school system.

Indian and Non-Indian Attitudes. The mean score for Indians on SPECP (need for special programs for Indian students) is 80; for non-Indians, the mean is 73. This difference is not statistically significant and we conclude that Indians and non-Indians alike are strongly in favor of Indian Education programs in general.[4]

It is also interesting to correlate SPECP scores with age, education and school involvement scores. The correlations for the two groups are as follows:

	Indians	Non-Indians
Age	-.33	-.07
Education	.19	.08
SCHINV	-.12	-.08

Thus, the older Indians[5] and the less educated Indians are less in favor of special Indian Education. The results for non-Indians are similar in direction but much weaker in magnitude. School involvement, unfortunately, leads to a lower SPECP score for both groups, but the effect is a weak one.

The results on the dichotomous attitudinal scales are summarized below for Indians and for non-Indians. The figures given are the percentages of respondents who answered favorably on each of the scales.

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[4] This conclusion may be tempered by the fact that non-Indians were more reluctant to take the questionnaire. Since many potential non-Indian respondents eliminated themselves from the sample, the remainder may well be biased in favor of Indian goals.

[5] "Older" should be thought of as middle-aged, since the sample does not contain many subjects over 50.

Scale	Indians	Non-Indians	Significance Level
PSUCA	19%	25%	--
PSUCI	30%	34%	--
COLL	81%	74%	--
AGRI	37%	53%	$p < .05$
VOCA	66%	74%	--

Neither group feels that the present educational program is satisfactory, either for children in general or for Indian children in particular. The non-Indians are a little more satisfied than the Indians and this extra satisfaction shows up on both scales. Thus, no pro- or anti-Indian bias is present here. In regard to types of courses that should be offered to Indians, Indians are slightly more in favor of college prep programs, while non-Indians are slightly more in favor of vocational programs. Neither of these differences is significant, as measured by the χ^2 statistic. The difference on AGRI, on the other hand, is significant at the .05 level, with non-Indians being more in favor of agricultural programs for Indians.

The general conclusion to be drawn from these data is that the Indian and non-Indian segments of the sample have just about the same set of attitudes on the question of Indian educational needs.

Rural and Urban Attitudes. Rural and urban mean scores on SPECP are 71 and 82, respectively. This difference is significant at the .05 level; and we conclude that special Indian educational needs are recognized more in the cities than in the rural areas.

The percentage of favorable responses on the dichotomous attitudinal scales is shown below, for rural and for urban respondents, along with significance levels for the differences.

Scale	Rural	Urban	Significance Level
PSUCA	29%	15%	$p < .05$
PSUCI	43%	16%	$p < .001$
COLL	71%	85%	$p \leq .05$
AGRI	48%	50%	--
VOCA	67%	80%	$p < .05$

The differences are striking. The urban respondents are less satisfied with the educational program in general, and are much less satisfied with the Indian educational program. They are more in favor in both college prep and vocational programs.

In general, the urban community seems to be a more fruitful locale for Indian Education.

Other Determinants of Attitude. Other comparisons have been made in regard to the need for special programs, but not for the other attitudinal measures. For sex, the means on SPECP are 76 for males and 71 for females; this difference is not significant. For profession, there is no overall significant difference, as determined by an F-ratio. Bankers and educators have the highest scores, while clergymen and executives have the lowest. On CIVORG, members of civic groups have a mean score of 76 on SPECP, while non-members have a mean of 73; the difference is not statistically significant. For religious organizations, the means are 69 and 76 for members and non-members, respectively; again, this difference is not significant.

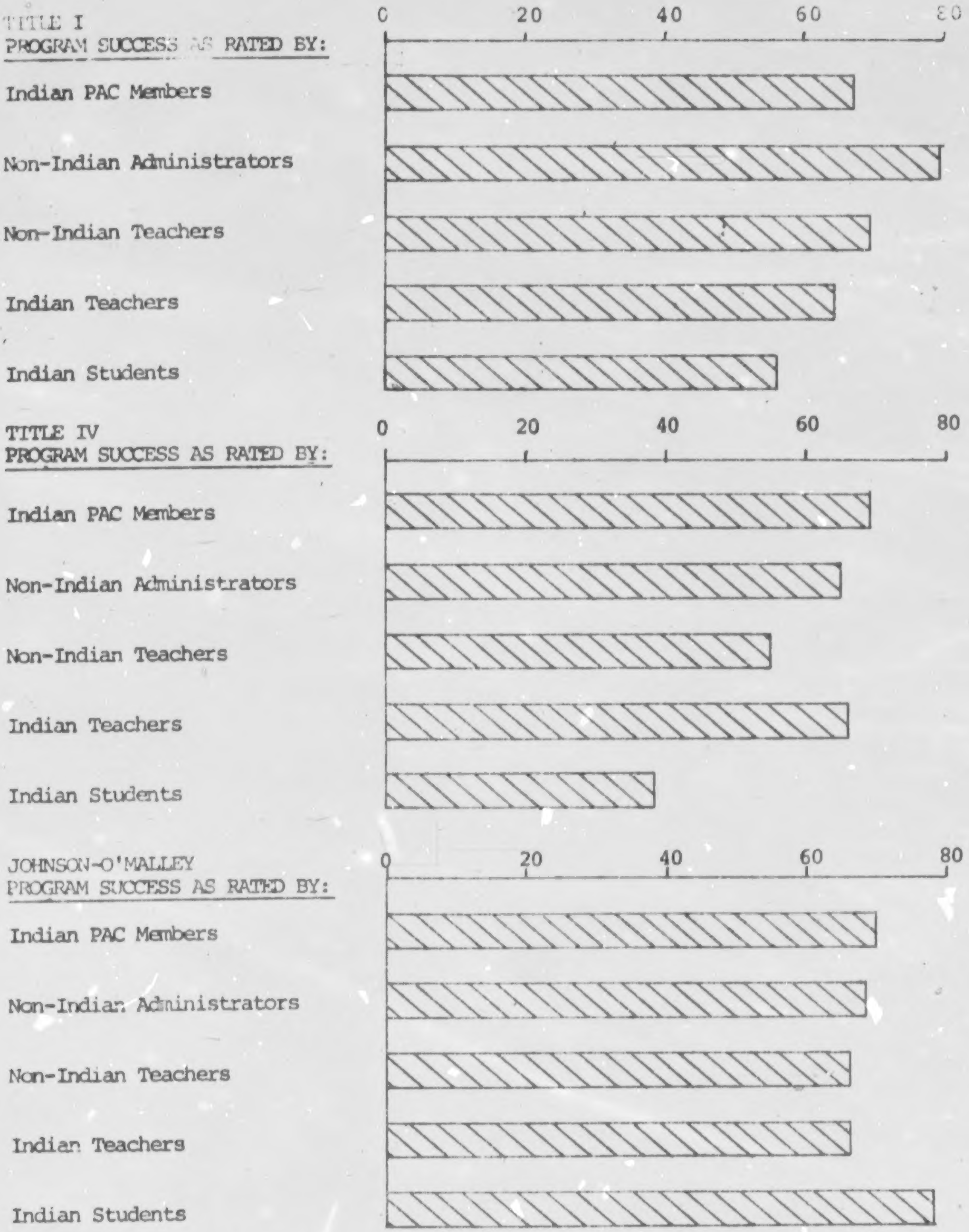

Figure 1. National Mean Scores from Educational Content Questionnaire - Program Success

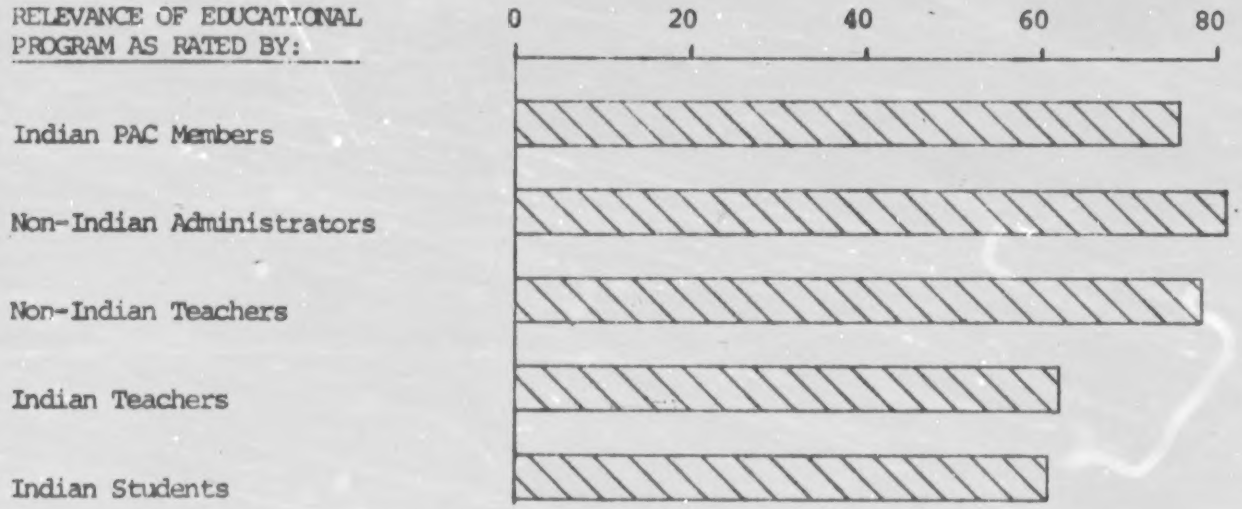

Figure 2. National Mean Scores from Educational Content Questionnaire - Program Relevance

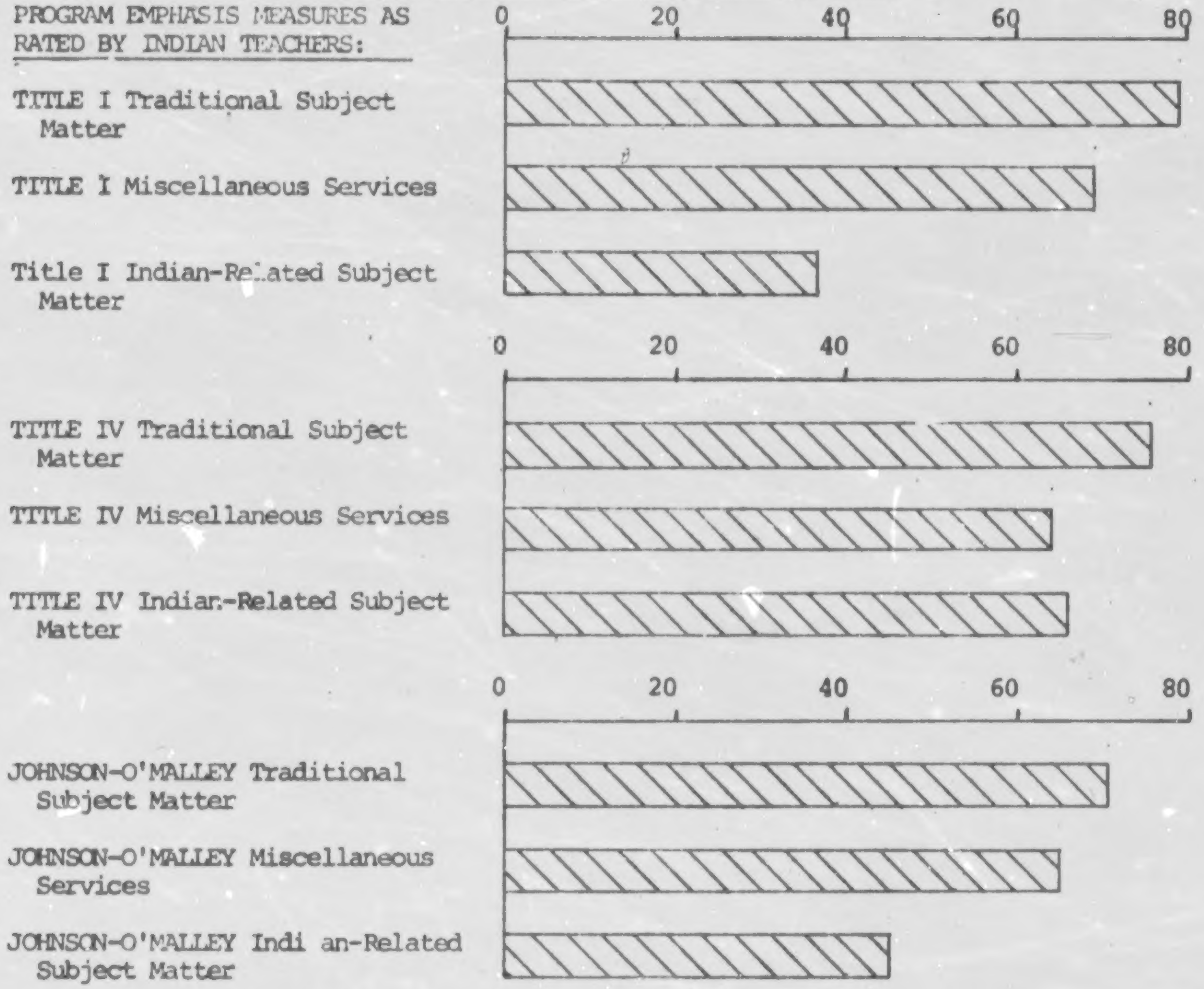

Figure 3. National Mean Scores from Educational Content Questionnaire - Program Emphasis

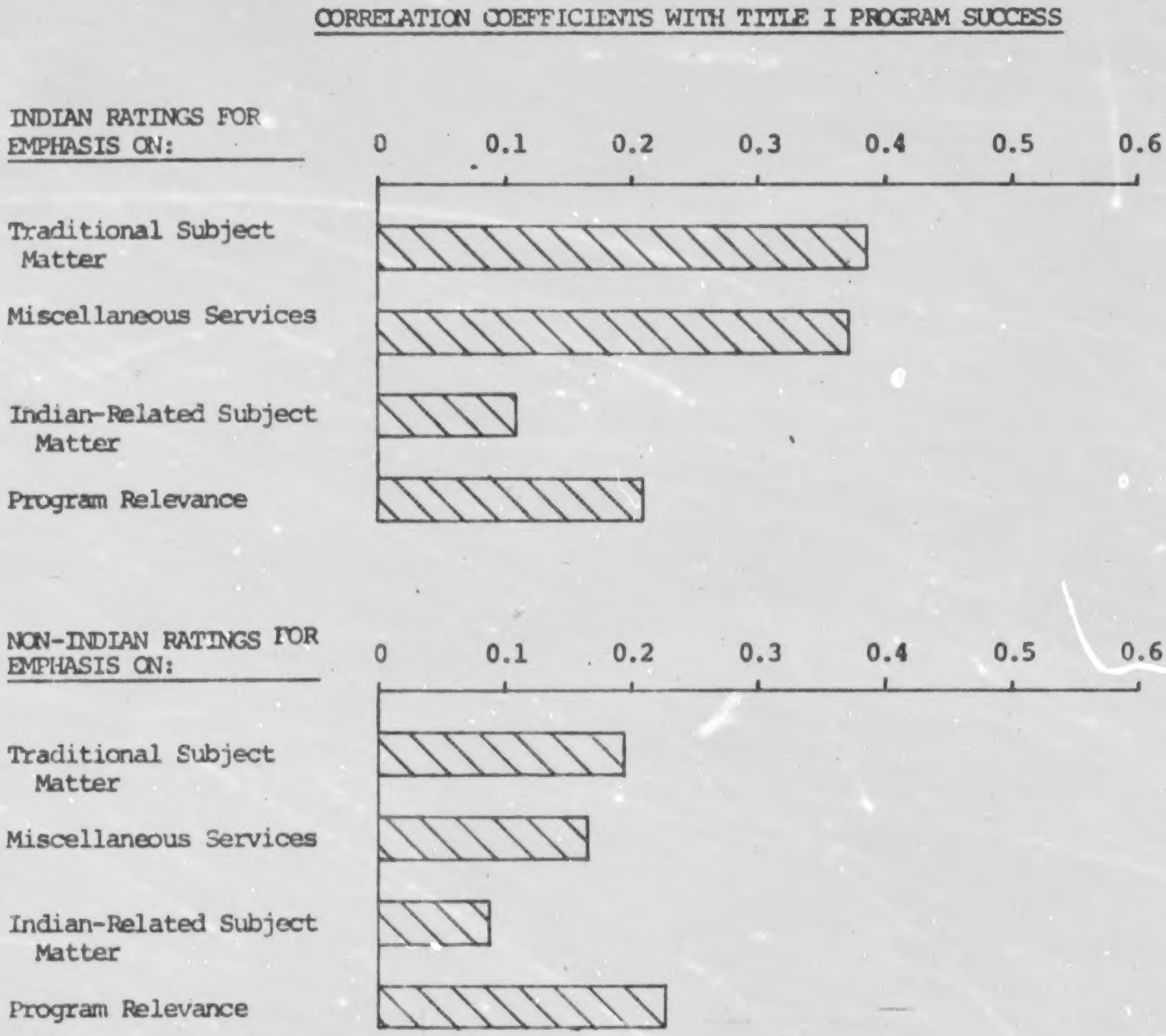

Figure 4.A. Correlates of TITLE I Program Success from Educational Content Questionnaire

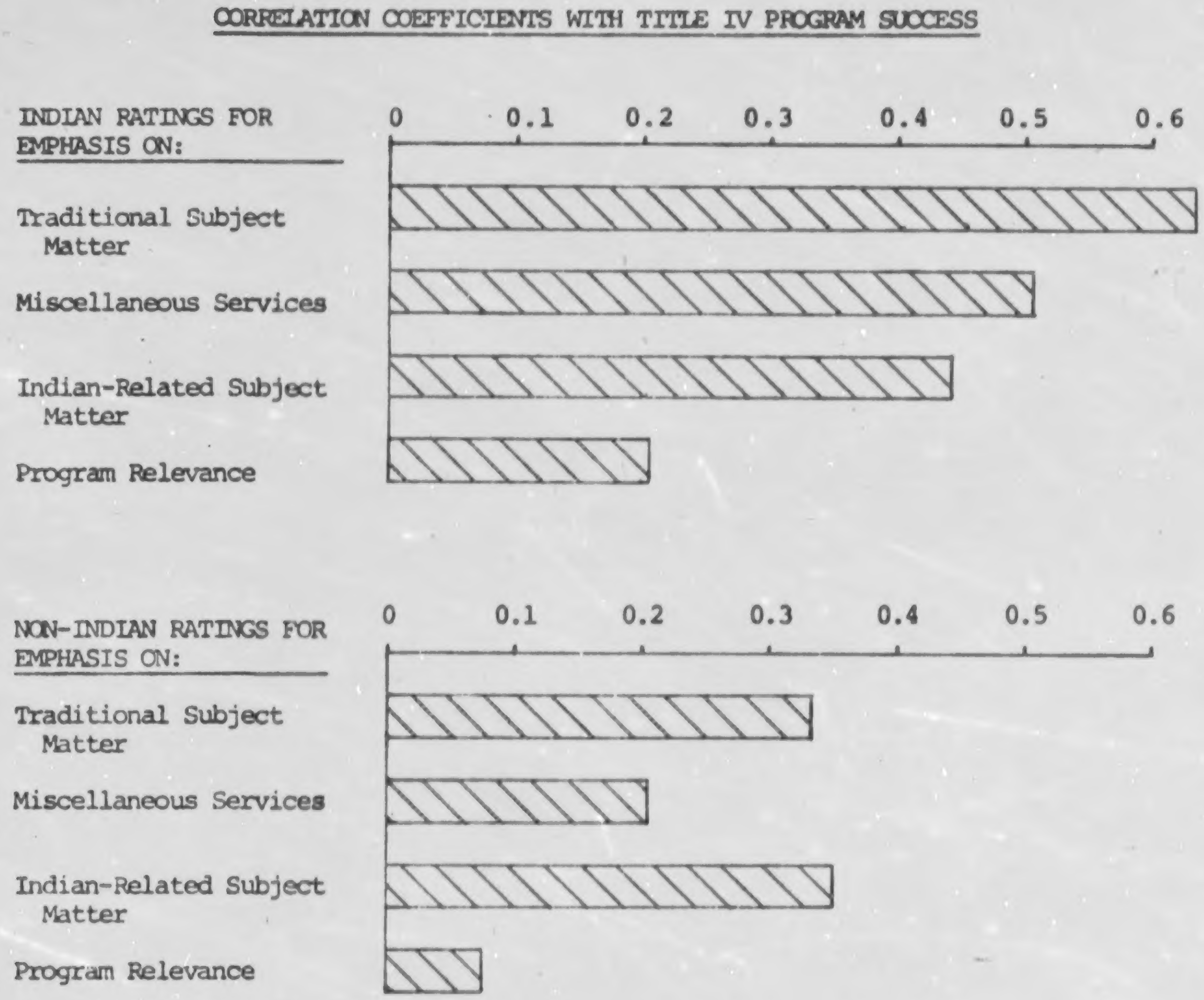

Figure 4.B. Correlates of TITLE IV Program Success from Educational Content Questionnaire

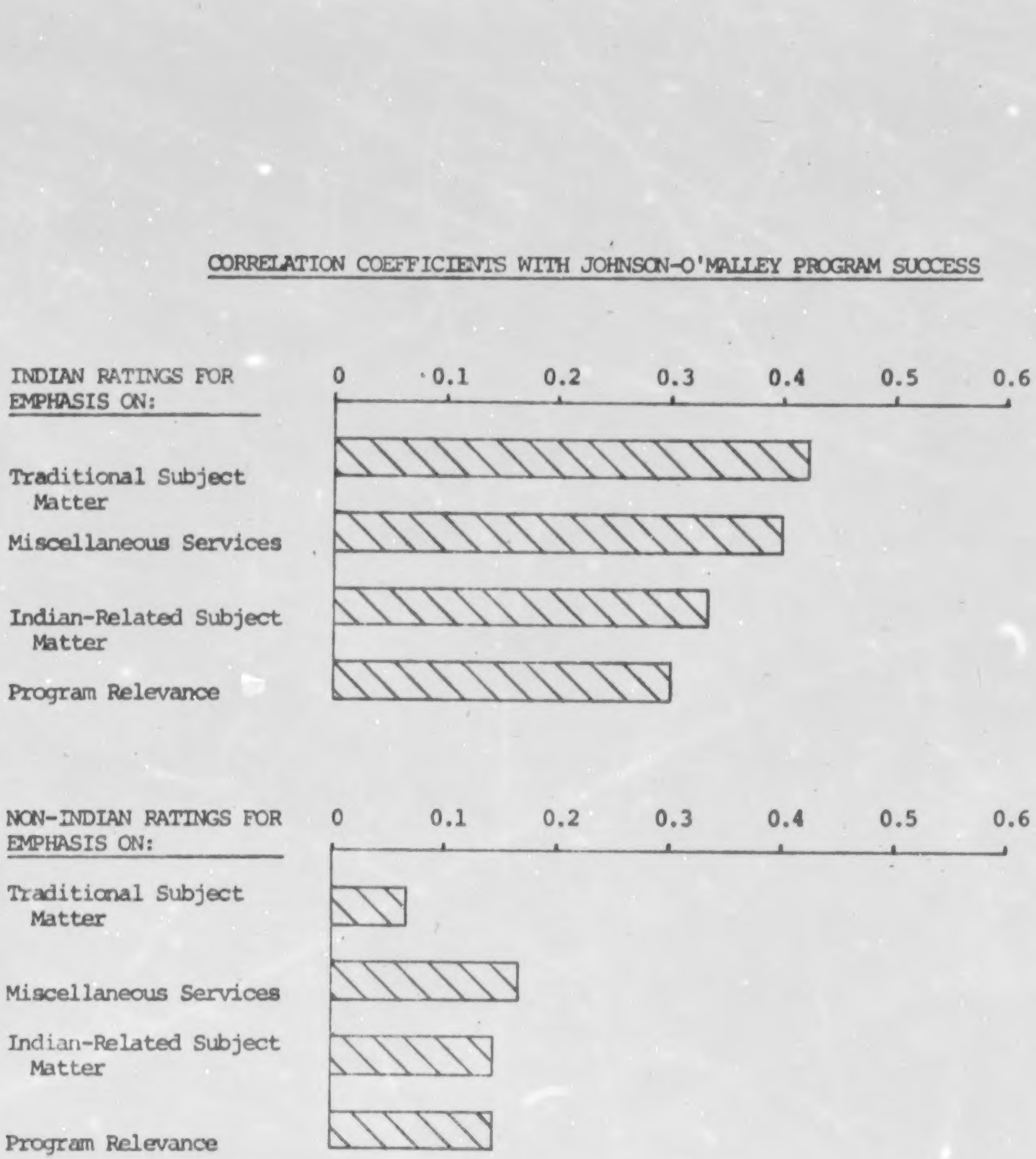

Figure 4.C. Correlates of JOHNSON-O'MALLEY Program Success from Educational Content Questionnaire

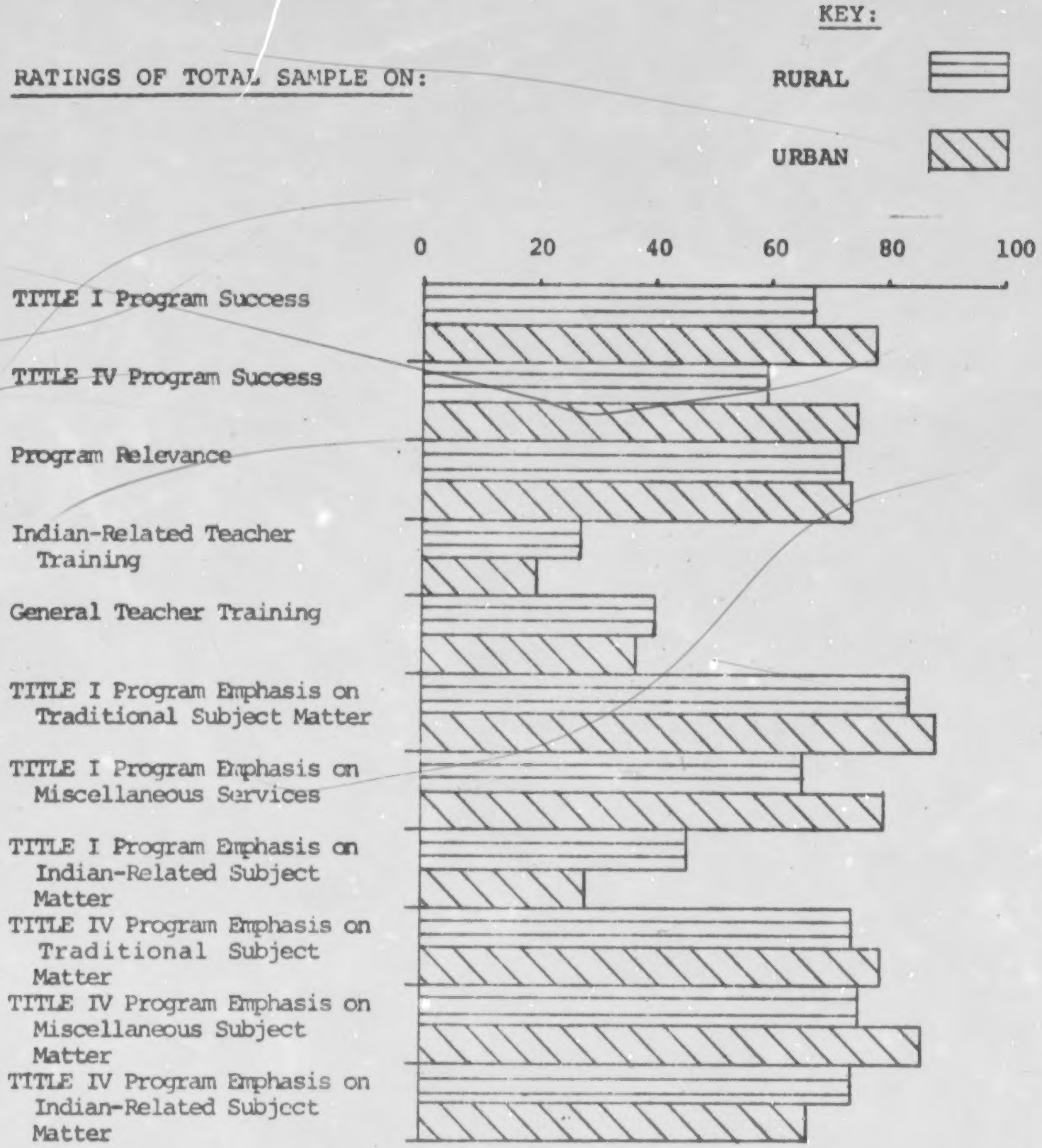

Figure 5. Rural and Urban Mean Scores from Educational Content Questionnaire

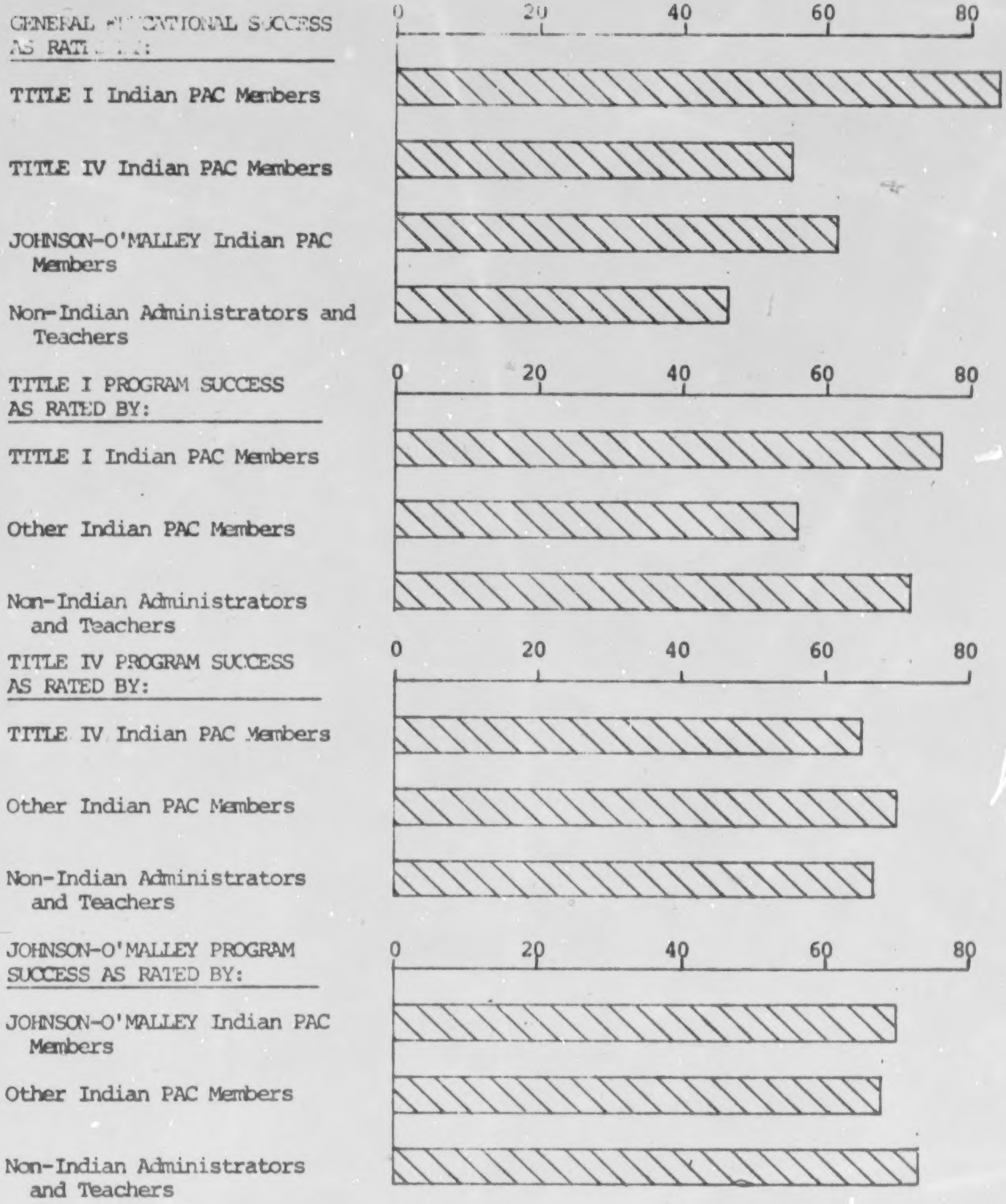

Figure 6. National Mean Scores from PAC Questionnaire - Educational Success and Program Success

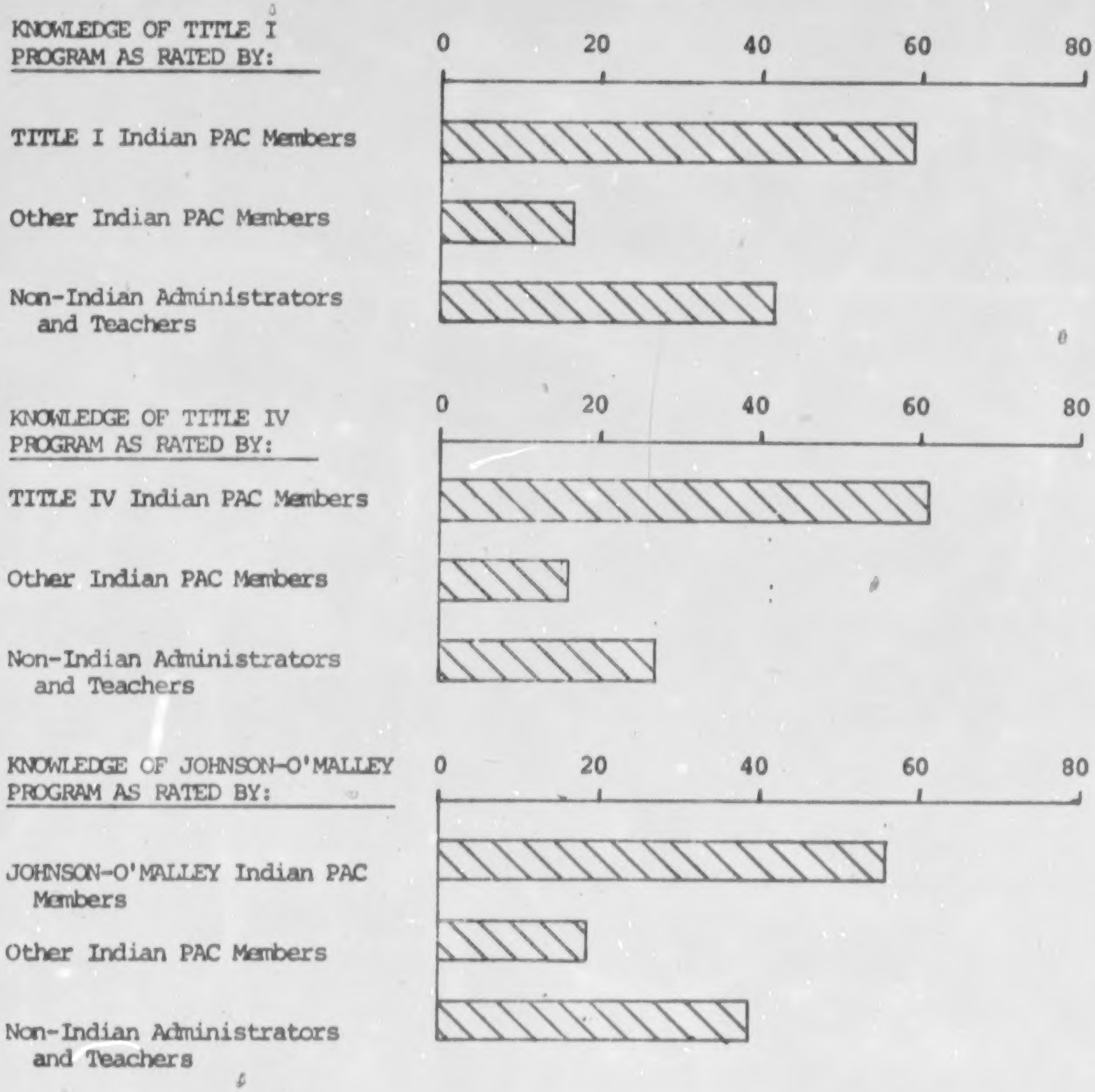

Figure 7. National Mean Scores from PAC Questionnaire - Knowledge of Program

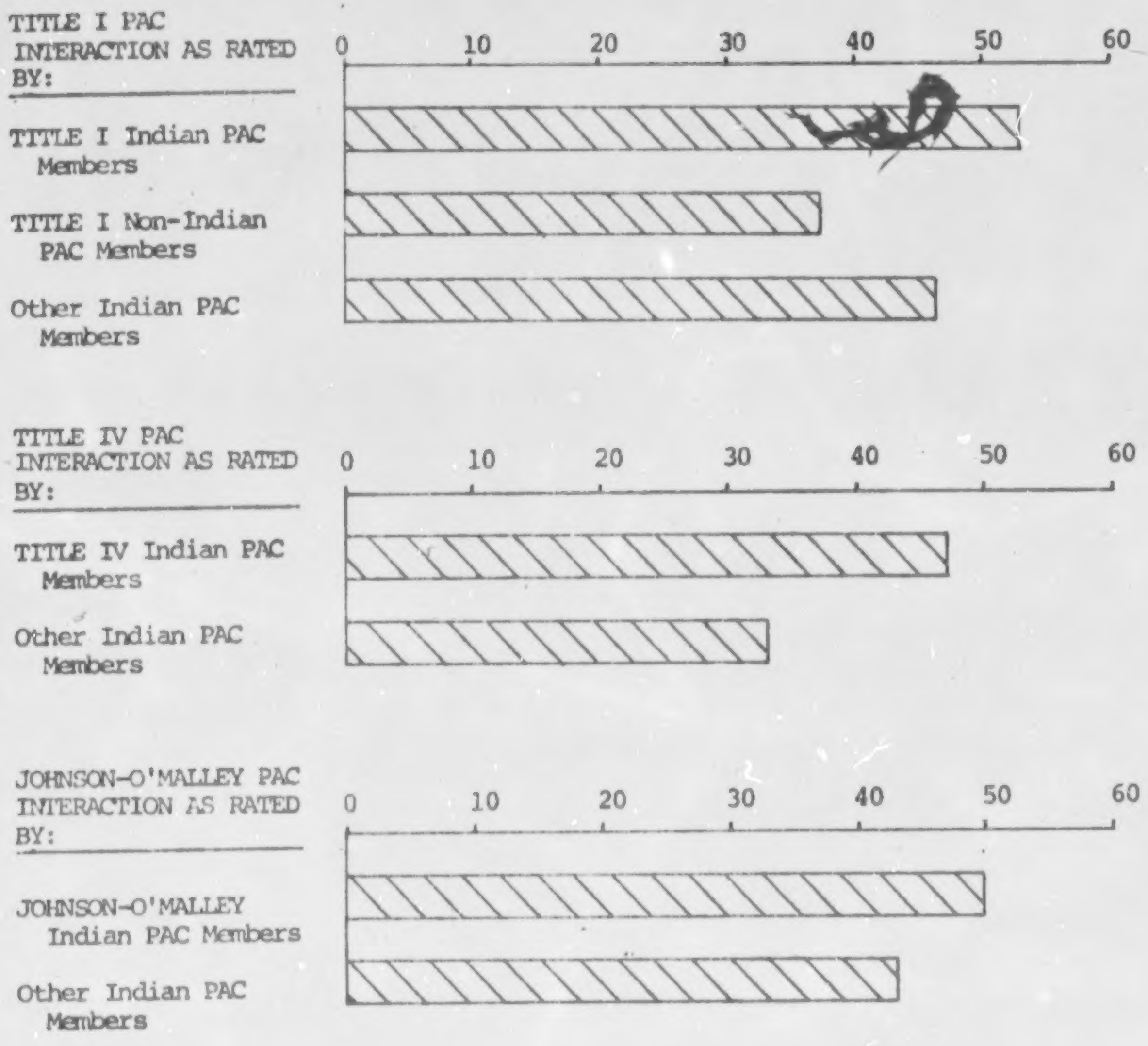

Figure 8. National Mean Scores from PAC Questionnaire - PAC Interaction

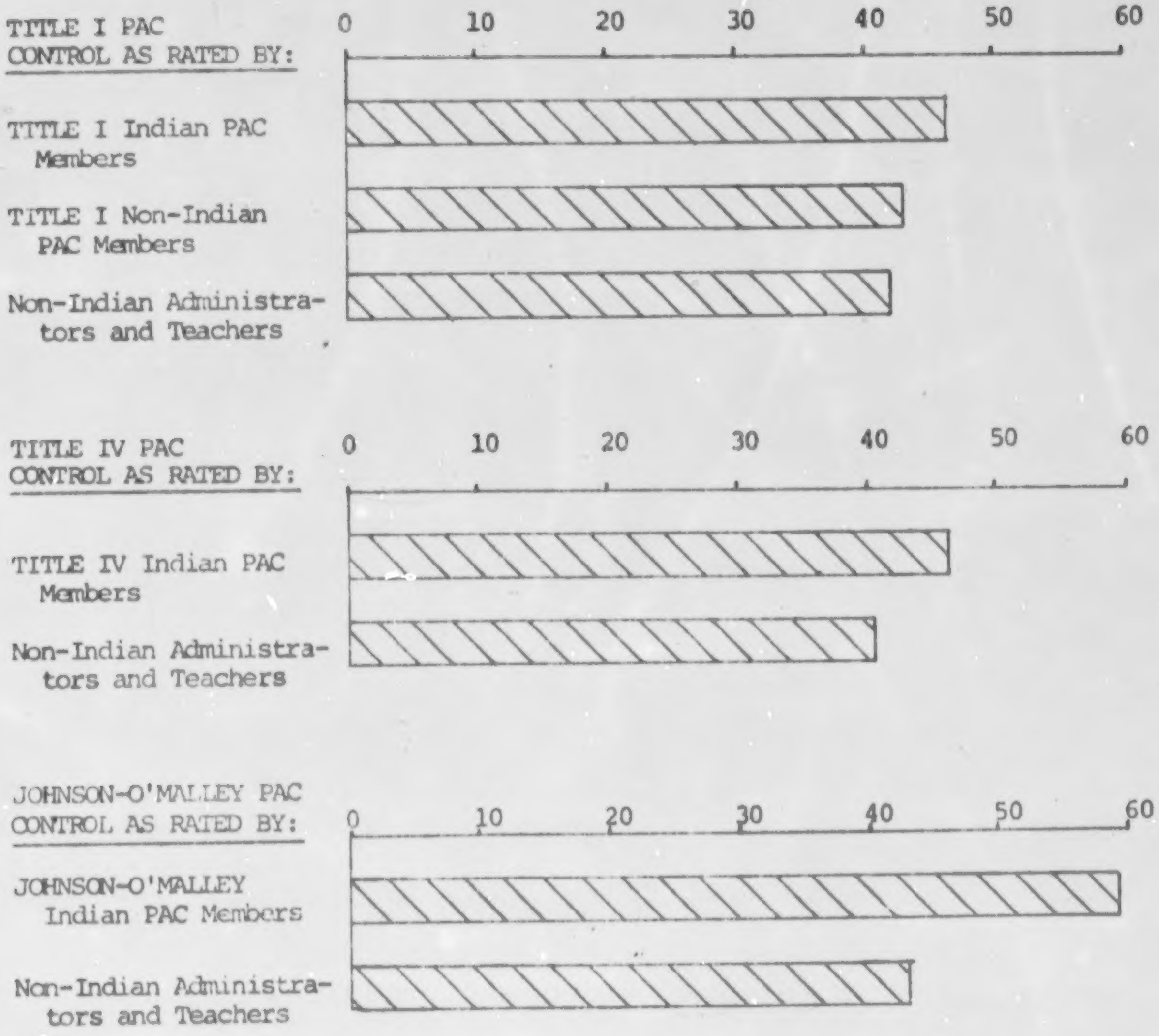

Figure 9. National Mean Scores from PAC Questionnaire PAC Control

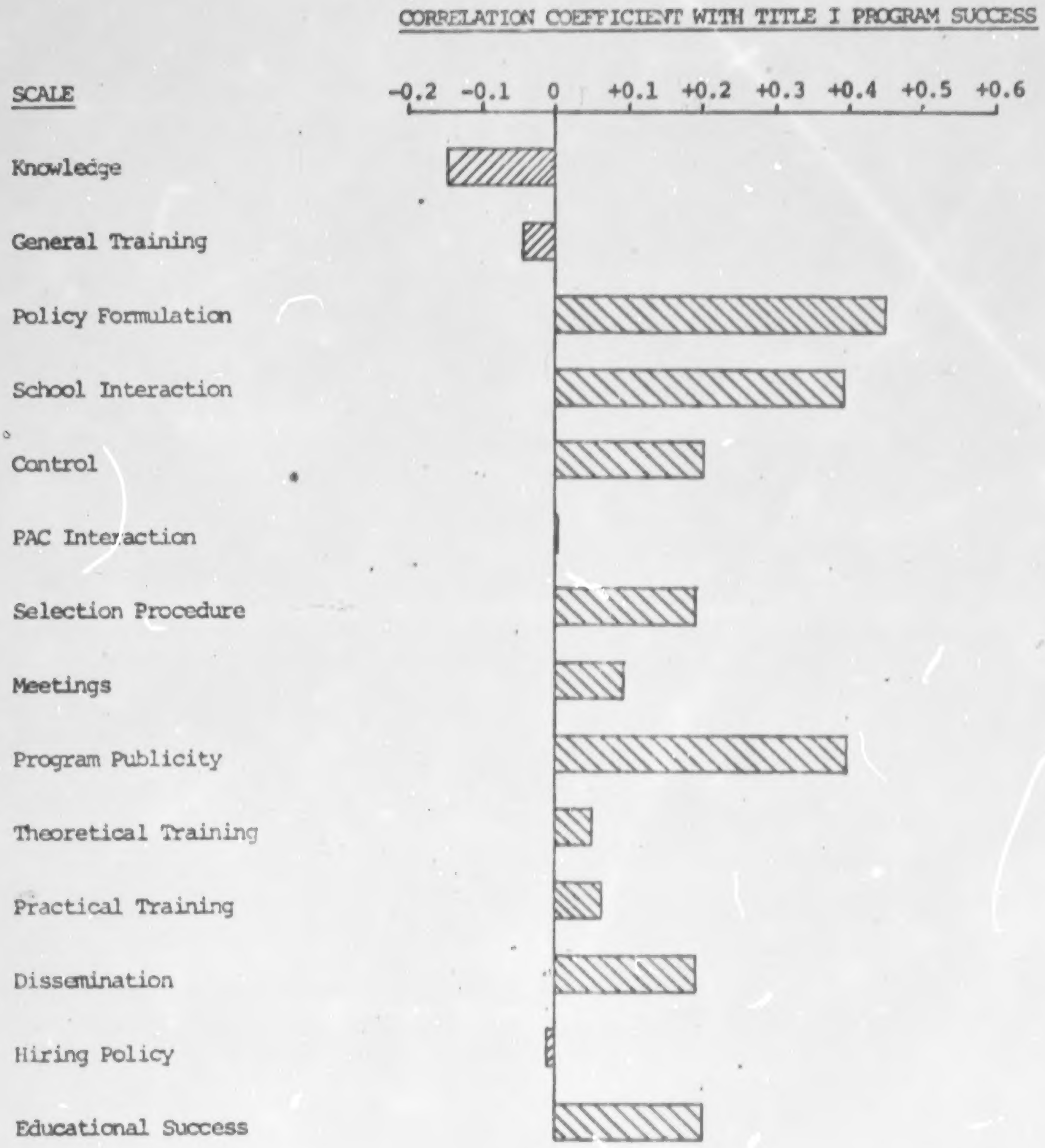

Figure 10. Correlates of Title I Program Success from PAC Questionnaire - Based on Ratings of Indian Title I PAC Members.

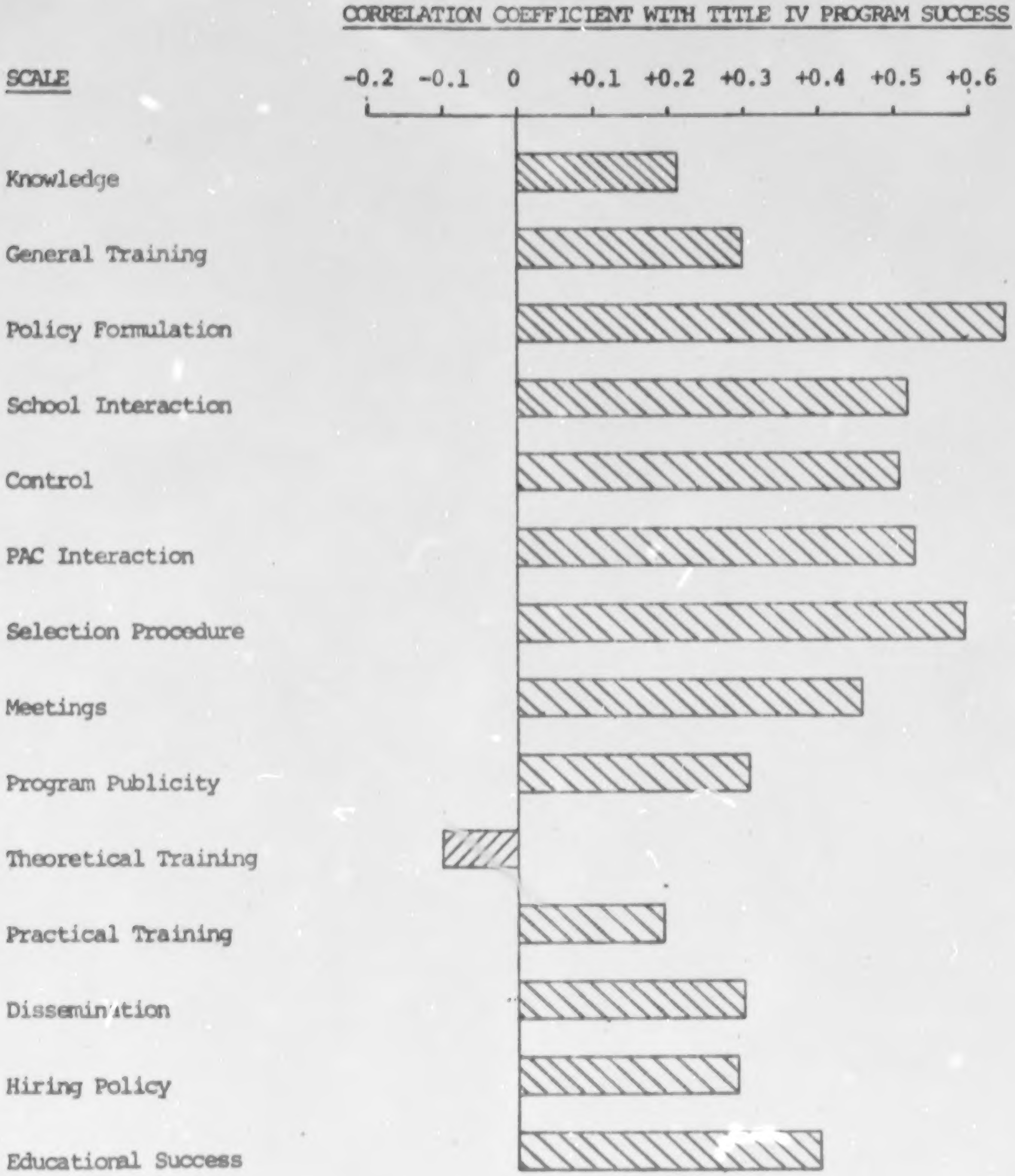

Figure 11. Correlates of Title IV Program Success from PAC Questionnaire - Based on Ratings of Indian TITLE IV PAC Members.

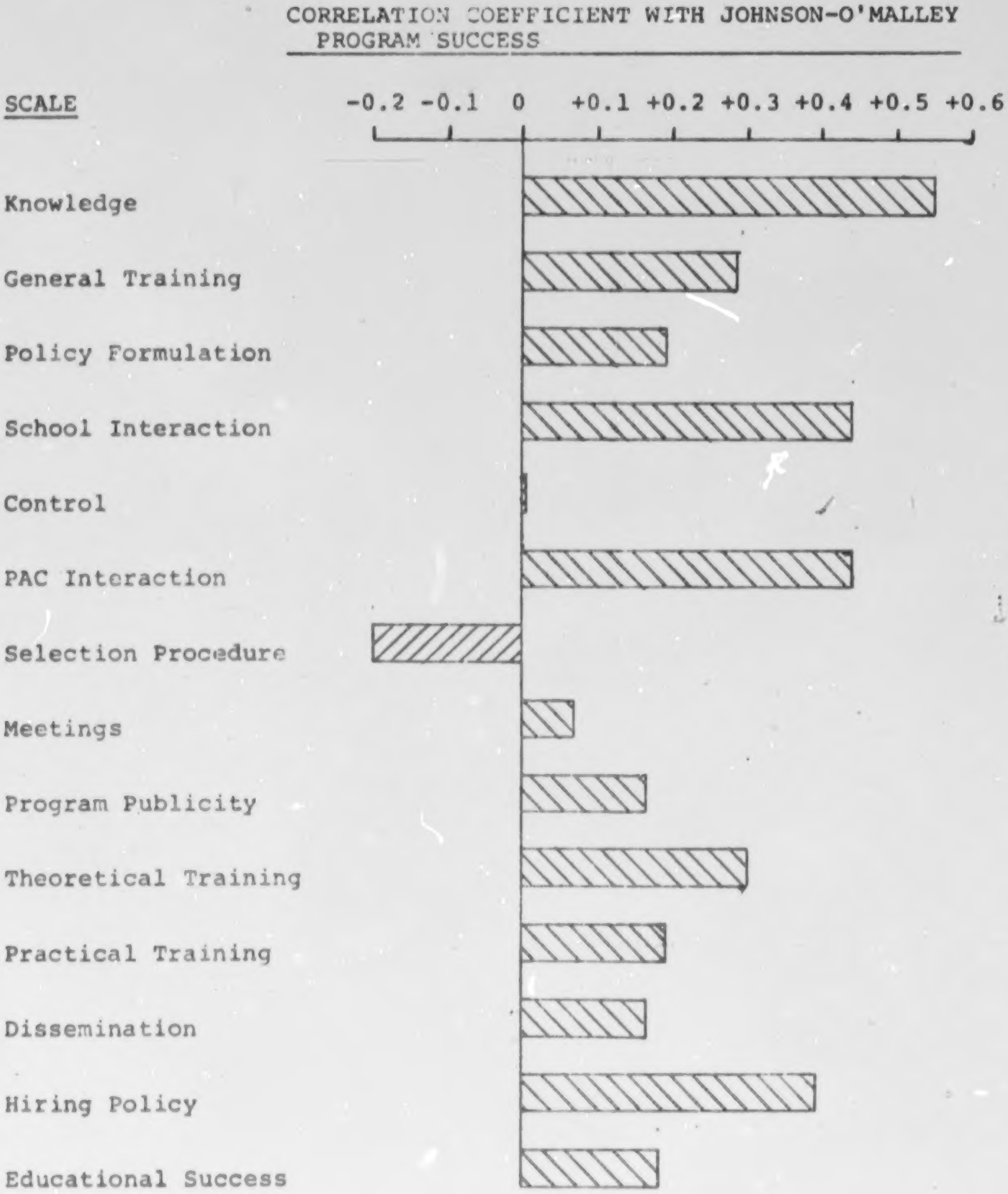

Figure 12. Correlates of Johnson-O'Malley Program Success from PAC Questionnaire - Based on Ratings of Indian Johnson-O'Malley PAC Members.

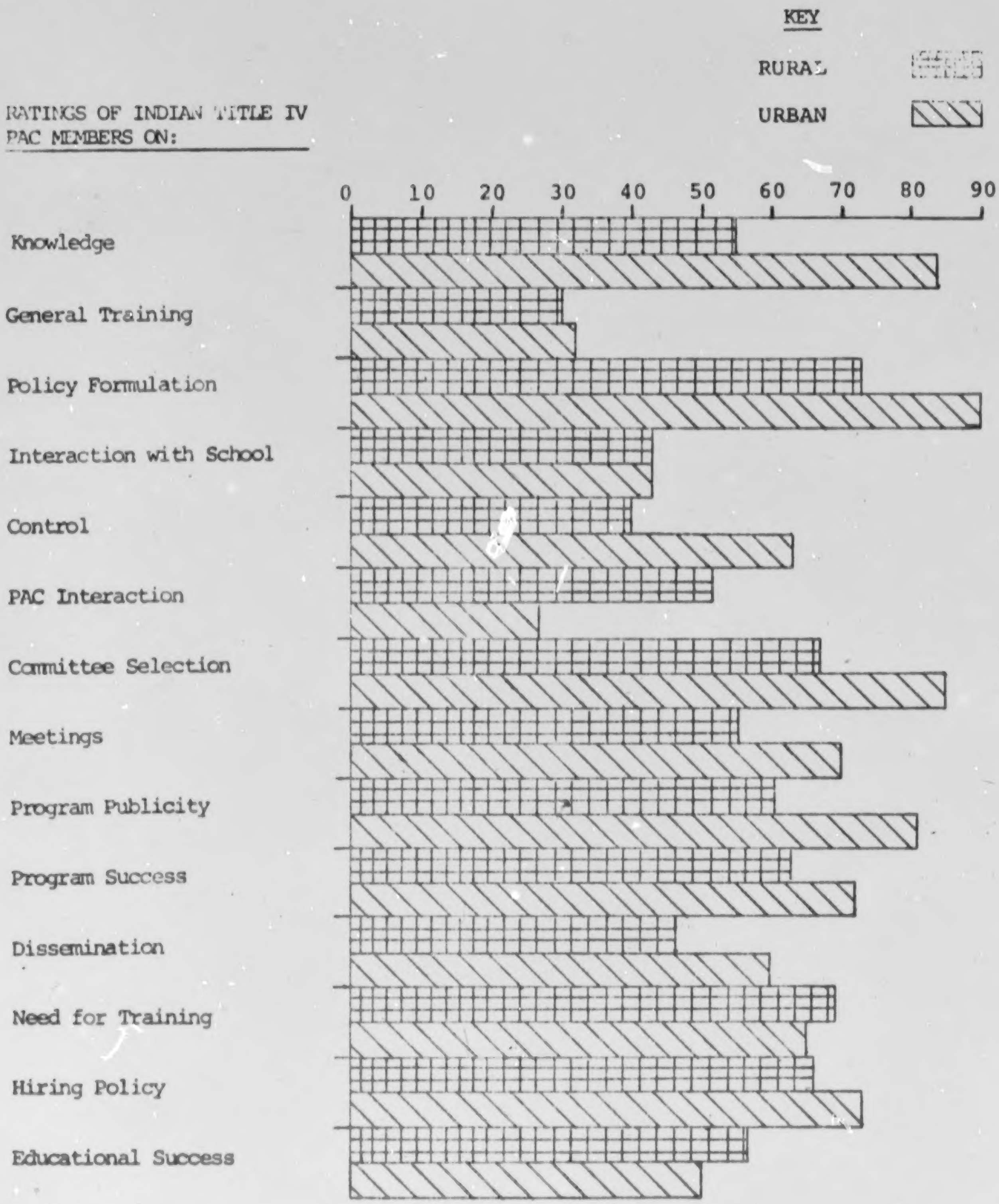

Figure 13. Rural and Urban Mean Scores from PAC Questionnaire

E. ELEMENTS OF PROGRAM SUCCESS

Summary of Conclusions and Recommendations

It should be kept in mind that we are using the opinion of PAC members, our direct link to the Indian community, to define "program success". We believe that this is a valid measure of the success or failure of a program in meeting community needs. There are many factors which affect the success of a program which include teaching quality, school administration, agency (LEA, SEA, BIA) management, input from the Indian community and prevailing attitudes in the community at large. In terms of the elements of the present study, there are two main direct links to program success: PAC operations and LEA operations. The first of these, PAC operations, is critical in its own right and is also the general key to involvement of the Indian community in the overall educational process. The second, LEA operations, is essentially the key to non-Indian influence on Indian Education. A third element, business community attitudes, does not directly affect the functioning of a particular educational program, but rather exerts its influence through the PAC and through the LEA. The final element, program management at the SEA and (for Johnson-O'Malley) at the BIA Area Office, is also indirect, influencing operations at the LEA.

PAC operations are a significant factor in program success for all three of the programs, but there is no consistent pattern in terms of which PAC activities or functions are important. The most uniformly important aspect of PAC functioning in terms of bringing about program success is interaction among the three PACs. We recommend, therefore, that either the PACs be merged into one Indian parent group that would have decision-making power in regard to coordinating Indian Education programs, or that the separate parent committees meet together on a regular basis.

LEA management is a significant factor in program success, but more in terms of hindering a program than of helping it. More specifically, most "sound management" practices at the LEA have a negative effect on the program. (The only exception is in the area of program design). This finding has significant implications. If we view management from an economist's point of view, we would say that sound management by definition implies efficient delivery of a satisfactory product to the consumer. While the instrumentation employed by the fiscal and management study teams tended to measure "efficient delivery" the instrumentation employed by the program study team tended to measure "satisfactory product" to the consumer. (The PAC members can be thought of as the consumers although in fact it is the students who are directly affected). The instrumentation employed by the management study team has wide acceptance for Title I evaluations by members of the educational community, including the U.S. Office of Education. Thus, the notions of management functions contained therein can be thought of as embodying current school management technology. We conclude that such technology is faulty. It does not take into account factors that determine whether or not the school system is delivering a satisfactory product to the consumer. While we recognize that there are limitations to the application of the economist's viewpoint to education, we feel that it has merit for pointing out the limitations of school management evaluation techniques, and thus of school management practices.

The traditional notions of management functions which define efficiency of management practice are not necessarily faulty in themselves but their application in the school/community situation is faulty. The LEA function of dissemination is a case in point. For all three programs, there is a negative relationship between program success and amount of information disseminated to the community by the LEA. Our conclusion in this case is that dissemination is one half of communication, and that the other half -- input from the Indian community to the LEA -- may well be lacking. If this is what is happening, then more dissemination would mean that the LEA is imposing more of its statements and policies on the community, and this could well be a barrier to program success. Similar arguments would hold for the other management functions.

We recommend that management evaluations be designed to rate an LEA on its problem-solving abilities and its effectiveness in providing educational services that are satisfactory to the Indian community. The notion of the management function of "evaluation" should be expanded to include an ongoing feedback activity from parents, students, and teachers to school administrators. The information provided by such feedback is necessary for LEAs to make adjustments in operations in order to solve concrete problems which hinder the attainment of educational goals jointly established by the LEA and the Indian community.

The problem of "negative influence" from the LEA is most striking for Title IV. Since this is the program for which the PAC has the greatest amount of control, we conclude that more Indian control leads to more hindrance from the LEA.

We therefore recommend that LEA operating policy be changed in such a way as to make the power granted to PAC's effective. If a satisfactory control mechanism cannot be found to require LEA to share the power for program management with PACs, then the legislation and/or regulations should allow for a by-pass of the LEA and direct funding to the PAC for the administration of supplemental educational funds.

Other areas of LEA operation -- compliance with rules and regulations and adherence to accepted accounting practices --

also have a negative effect on program success, at least for Title IV and for Johnson-O'Malley. The interpretation here is similar to that for "sound management": fiscal compliance often means rigidity, which in turn implies a lack of responsiveness to the needs of the community. For the Johnson-O'Malley program, in particular, the use of funds is so varied from one site to another, that fiscal compliance could easily be a deterrent to effective use of funds.

Comparing PAC functioning and LEA functioning we find that only for Title I is a high score in PAC functioning the more important of the two in predicting program success. This would seem to indicate that the LEAs and PACs for Title I are in better agreement as to their respective roles. It should be noted that Title I boards are not controlled by Indian PAC members and that Title I has traditionally concentrated on basic foundation skills, i.e., reading, math, etc. For Title IV, poor LEA management is more important for predicting program success than good PAC functioning. For Johnson O'Malley, poor LEA management as a predictor of program success completely obliterates whatever effect might come from PAC functioning. Not only does current LEA operation hinder program success, but it tends to negate the positive effect of the PAC.

Business community attitudes toward Indian Education influence program success both through the LEA and through the PAC. As might be expected, the effect via the LEA is the stronger of the two. Title IV is the only program for which favorable attitudes lead to a more successful program. The other two programs are more successful in communities where non-preferential treatment for Indian students and "learning a trade" are the educational norms. Title IV seems to be the best vehicle for translating favorable business community attitudes into good educational programs. We recommend retaining and strengthening Title IV.

The effect of SEA management on the LEA is generally non-existent. For the Johnson-O'Malley program, the conclusion is stronger yet: good management at the SEA and at the BIA Area Office seems to lead to bad management at the LEA. This is a disturbing result, since SEA operation should provide a model for LEA operation. It should be noted that this finding is based upon correlation analysis of the data internal to the management study, thus there are no factors introduced as a result of conflicting methodologies or of differences in perceptions of basic management functions.

The lack of positive correlation of management success scores between the two levels of management further supports the conclusion that current school management technology is faulty.

We recommend that management practice and evaluations emphasize feedback from operational levels and that the respective powers of each level of management be clearly defined. We further recommend that Indian PACs be given effective authority to define goals and objectives of Indian educational programs.

We recommend that funds for training and technical assistance be used at the local level to make the LEAs more receptive to community needs and desires. For the Johnson-O'Malley program, we recommend that contracts between the BIA and the SEA be eliminated, with all funds going to Tribal groups instead.

In this connection, another conclusion to be noted is that, at the LEA, while sound Title I management and sound Title IV management tend to go hand in hand, they are both negatively related to sound Johnson-O'Malley management. This competition, at the LEA, between Johnson-O'Malley and the other programs furnishes further grounds for removing Johnson-O'Malley from the jurisdiction of the LEA.

The relationship among the three programs in terms of program success mirrors the relationship found at the LEA. Again, Title I and Title IV are found to be positively related: where one of these programs is considered to be successful, the other tends to also be considered successful. And again, success for either of these two programs tends to detract from the Johnson-O'Malley program.

The final criterion is not, of course, the success or failure of any particular federal program, but rather the value of the general educational program in preparing Indian students. The relationship between this general educational value and program success is not strong for any of the programs, which suggests that a total re-examination of the goals of Indian Education is in order. What relationship does exist is mainly due to Title IV, strengthening our recommendation that this program is the best vehicle for implementing Indian educational needs, and that it should be emphasized and expanded accordingly.

Methods

The basic analysis model is shown in Figure 1. The major goal of this analysis is to study the influence of the PAC, of the LEA, of the business community and of the SEA on program success for each of the three programs.

Influence is thought of in correlational terms, and the overall analysis model suggests some variety of multiple regression as the primary analytic tool. Since sites play the role of "subjects" in this analysis, we are restricted to a sample size of 15 (11 for the Johnson-O'Malley program). This sets an upper boundary on the number of predictor variables that can be considered simultaneously, and we have therefore used multi-stage regression techniques to study the model in its entirety. The steps involved here are as follows:

1. Split the scales from the PAC questionnaire into three broad classes: initial operations, on-going activities and goals. Predict program success from each of these classes of variables.
2. Choose the one or two best predictors from each class, combine these, and predict program success from this new set.
3. Predict program success from the eight LEA management dimensions.
4. Choose the four best LEA management dimensions, and predict program success from this reduced set.

5. (For Title I and Title IV) Predict program success from the five fiscal compliance ratings.

6. Predict program success from the four ratings of LEA accounting systems and procedures.

7. From the regression equations of steps 2, 4, 5, and 6, construct composite variables for these areas. Each of these composite variables is the "best" linear combination of items in terms of being related to program success. (Note that a composite variable, e.g. for LEA management, differs from one program to another.)

8. Predict program success from the four (three for Johnson-O'Malley) composite variables.

9. Predict the PAC composite variable and the LEA management composite variable from the business community attitude scales.

10. Correlate LEA management dimensions with the corresponding SEA management dimensions and (for Johnson-O'Malley) with the BIA management dimensions.

The preceding analysis was done separately for each of the three programs. In order to interrelate the programs, additional analysis, as shown by the model in Figure 2, was undertaken. The steps here are as follows:

- Correlate corresponding LEA management dimensions across the three programs.
- Correlate the three-program success measures.

- Predict general educational relevance from the three-program success measures.

The fiscal ratings for LEA compliance and for LEA accounting are self-explanatory. Management dimensions are also self-explanatory; more detail on these dimensions may be found in the program section. Acronyms are used for PAC scales and business community attitude scales in the tables, but descriptive terms are used in the text; more detail on these scales may be found in the program section.

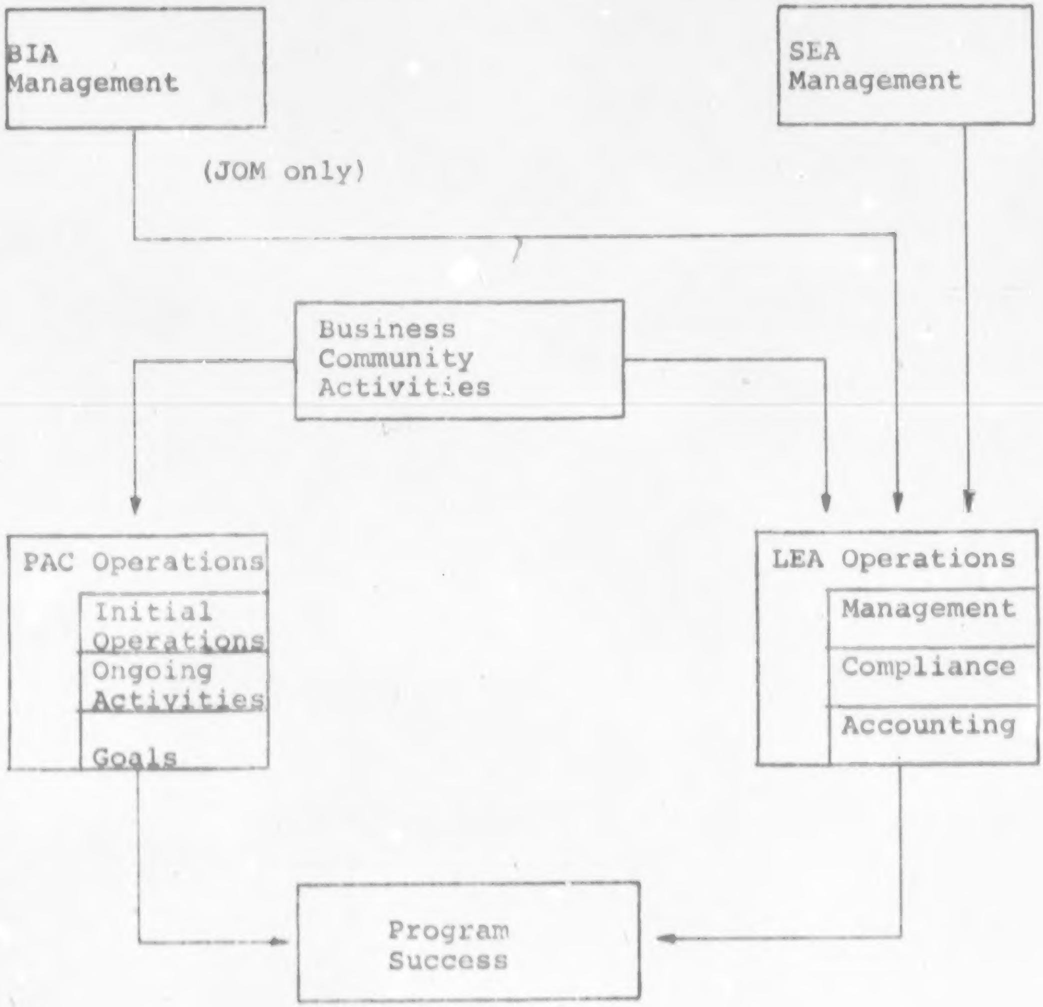
BIA
Management
SEA
Management
(JOM only)
Business
Community
Activities
PAC Operations
Initial
Operations
Ongoing
Activities
Goals
LEA Operations
Management
Compliance
Accounting
Program
Success

Figure 1. Overall Analysis Model, for Studying Elements of Success for Each Program Separately.
Overall Analysis Model, for Studying Influence of PAC, LEA, Business Community and SEA on Program Success for Each Program Separately.

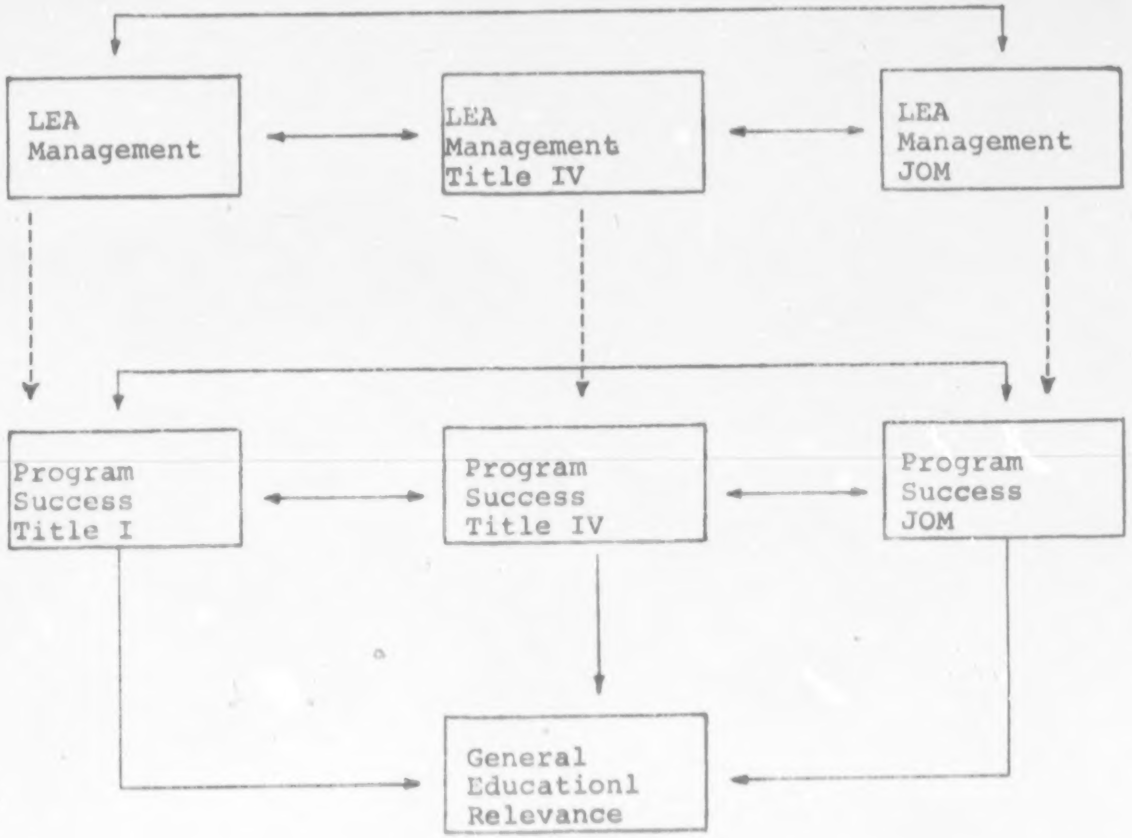
LEA Management
LEA Management Title IV
LEA Management JOM
Program Success Title I
Program Success Title IV
Program Success JOM
General Educationl Relevance

Figure 2. - Overall Analysis Model, for Studying Relationships Among the Programs.

Discussion of Findings

The results of predicting program success from PAC scales are shown below. Beta weights are given for the four most important scales, as determined from a preliminary analysis; multiple correlation coefficients and significance levels are also shown:

	Title I	Title IV	JOM
PAC: Beta Weights for Background Scales			
KNOW	--	--	--
T/GEN	--	0.44	--
SELECT	-0.29	0.64	--
PROPUB	--	--	0.35
Activity Scales			
SCHINT	0.19	--	--
PACINT	0.26	0.12	0.92
MEET	--	0.04	--
DISSEM	--	--	0.17
Goal Scales			
ACT/PF	0.68	--	-0.48
CONTRL	--	-0.28	--
Multiple R	0.81	0.61	0.92
Significance Level	$p<.1$	--	$P<.05$

For Title I the relationship batween PAC functioning and program success is marginally significant; this significance results almost exclusively from the importance of policy-formulation activities. Since Title I programs are generally remedial in nature, and thereby more limited in scope than either Title IV or Johnson-O'Malley programs, this result is not surprising. It suggests that policy formulation is a more important factor when the programs are traditional and involve agreement between the PAC and the LEA on educational goals.

For Title IV, the multiple correlation coefficient of 0.61 is not significant. What relationship does exist is mainly in terms of background scales, general value of training and committee selection procedures. This result is to be expected. Since Title IV has only been in existence for a short time, selection and training are more current than they are for the other programs. Note, though, that selection procedures have a negative influence on program success for Title I. A successful program is less likely to have involved the Indian community in the selection of PAC members. This is, of course, simply a consequence of the fact that Title I is not an Indian-oriented program.

Johnson-O'Malley program success has a multiple correlation coefficient of 0.92 with PAC scales. This relationship, which is significant at the .05 level, is almost entirely due to the importance of interactions with other PACs. It should be noted in this regard that PAC interaction, while entering the regression weakly for Title I and Title IV, is still the only scale that has a positive influence on success for all three programs. Thus, the importance of coordinating parent involvement --which was a finding of the program study-- is again made evident.

A similar analysis was done for LEA management, and the results are shown below. As with the PAC analysis, beta weights are shown for the more important scales, as determined from a preliminary analysis.

Beta Weights for LEA Management	Title I	Title IV	Johnson-O'Malley
Program Design- Technical Assistance	0.41	0.38	1.01
Evaluation	--	--	-0.34
Dissemination	--	-0.45	0.22
Program Management	0.45	--	--
Training	--	--	--
Technical Assistance	-0.54	--	--
Organization	--	-0.26	-0.87
Legislation	-0.23	-0.57	--
Multiple R	0.43	0.89	0.71
Significance Level	--	$p < .01$	--

Although the association between management scales and program success is significant only for Title IV, a general pattern can be seen in these results. Program design is the only management dimension for which good management is associated with program success. For the other dimensions, the beta weights are generally negative, which leads us to conclude that, except in the case of program design, LEA management functions serve mainly as a hindrance to program success. The effect is most striking for Title IV, where it could be said that program success, as seen by Indian PAC members, is strongly related to poor management of the program at the LEA.

Program success, as related to the LEA, was predicted from compliance ratings, taken from the fiscal study for Title I and for Title IV; for Johnson-O'Malley, these ratings were either confusing (resulting from the confusing pattern of use for Johnson-O'Malley funds) or were uniformly low and therefore did not have sufficient variance to be used in a correlational analysis. The results for Title I are as shown below.

LEA fiscal compliance, Title I:

Beta Weights for	
Geographical Targeting	0.04
Documentation of Eligibility Criteria	0.60
Adequacy of Program Objectives in View of Other Federal Programs	-0.02
Identification of Students for Project Participation	-0.14
Adequacy of Evaluation Methods	-0.28
Multiple R	0.59
Significance Level	--

The relationships here are not strong. The only important factor is eligibility, suggesting that Title I success may be viewed in terms of maximizing student participation (and thereby maximizing funding), rather than in terms of program content. For Title IV, the results are as shown below:

LEA fiscal compliance Title IV:

Beta Weights for	
Involvement of Parents, Teachers and Students in Needs Assessment	-0.14
Expenditure of Funds in Accordance with Rules and Regulations	0.15
Adherence to Combined Fiscal Effort Requirement	-0.47
Compliance in Financial Reporting	-0.08
Adequacy of Evaluation Methods	0.09
Multiple R	0.54
Significance Level	--

The most important predictor here is adherence on the part of the LEA to the combined fiscal effort requirement. The association with program success is a negative one, so that the program is considered more successful at sites where there was little or no adherence to this requirement. We believe that this is probably due to adherence being synonymous with use of Title IV funds to "plug holes" in funding. Since such use would diminish the impact of Title IV on Indian educational needs, it would be viewed by the community as a negative factor. In general, the beta weights are more negative than positive for Title IV, so that program success is more a result of non-compliance than of compliance. This is equivalent to LEA mismanagement, as discussed above. The general conclusion seems to be that LEA functioning is competing with community educational goals, rather than facilitating them.

A third area of LEA activity is that of accounting. Four compliance criteria dealing with the general LEA accounting system and procedures have been related to program success, with the following results:

LEA accounting compliance:

Beta Weights for	Title I	Title IV	Johnson-O'Malley
Adequacy of Accounting System	0.32	0.51	-0.04
Adequacy of Staffing	0.05	0.32	-0.78
Compliance with State Law	0.06	-0.51	-0.12
Annual Audit Compliance	-0.32	-0.80	-0.21
Multiple R	0.36	0.68	0.89
Significance Level	--	--	$p < .05$

For Title I and Title IV, the relationship of these items to program success is not significant. In both cases, an adequate accounting system seems to promote program success, but audit compliance seems to detract from it. For Johnson-O'Malley the relationship, which is statistically significant, is totally negative: good accounting practices all detract from program success. This is probably related to the great variability in the way Johnson-O'Malley funds are used; adherence to good accounting practices may be a deterrent to using funds in ways that the community would find desirable.

Composite variables were constructed for the areas of PAC functioning, LEA management, LEA compliance and LEA accounting, with individual items weighted in accordance with the regression equations summarized above. Prediction of program success from these four composite variables (three for Johnson-O'Malley) yields the following results:

	Title I	Title IV	Johnson-O'Malley
Beta Weights for			
PAC Functioning	0.60	0.29	-0.05
LEA Management	0.15	0.49	0.38
LEA Compliance	0.16	-0.08	--
LEA Accounting	0.13	0.44	0.72
Multiple R	0.82	0.93	0.93
Significance Level	$p < .05$	$p < .001$	$p < .001$

For Title I, the relationship between program success and PAC functioning is highest, while none of the LEA functions is important. This indicates that, for this program, the LEA is seen in neutral terms, with the PAC being the determining factor in program success or failure. This would speak well for the Title I program, were it not for the fact, documented below, that this program is unrelated to general relevance of the school program to Indian needs. (It should also be kept in mind that the multiple correlation coefficient of 0.82 is not really high, since the composite variables are specifically constructed so as to maximize correlations with program success).

For both Title IV and Johnson-O'Malley the overall relationship is much stronger and is more dependent on the LEA than on the PAC. Title IV success is seen as depending to some extent on PAC activities, but to a greater extent on non-hindrance, in management and accounting terms, on the part of the LEA. For Johnson-O'Malley, the picture is bleaker. PAC activities are irrelevant to program success; only non-hindrance by the LEA can lead to success.

The next step in investigating the overall model is to determine the effect of business community attitudes. The business community is assumed to exercise its influence both through the LEA, primarily in terms of program management, and through the PAC. Therefore, multiple regressions have been run to predict the composite scores in these two areas from the business community attitudes. The results are shown below.

Predicting PAC Composite Variable

	Title I	Title IV	Johnson-O'Malley
Beta Weights for			
SPECP	-0.22	0.52	-0.42
PSUCA	0.00	0.18	-0.03
PSUCI	-0.01	-0.05	-0.18
COLL	-0.70	0.07	-0.23
AGRI	-0.21	0.01	0.11
VOCA	0.56	-0.18	0.11
Multiple R	0.38	0.43	0.80
Significance Level	--	--	--

Predicting LEA Management Composite Variable

	Title I	Title IV	Johnson-O'Malley
Beta Weights for			
SPECP	-0.24	0.27	-0.71
PSUCA	0.04	0.70	-0.08
PSUCI	0.05	0.04	-0.99
COLL	-0.80	-0.24	-0.63
AGRI	-0.43	-0.19	0.46
VOCA	1.14	0.40	0.20
Multiple R	0.59	0.59	0.99
Significance Level	--	--	$P<.001$

For each of the three programs, multiple correlation coefficients are higher for predicting LEA management than for predicting PAC functioning. This is to be expected, since the business community is closer in racial and socioeconomic composition to the LEA staff than to the PAC membership; in fact, it of interest that the attitudes of the business community are manifested in the PAC to the extent that they are. The general conclusion, however, is that business community influence on program success operates more through the LEA than through the PAC.

Comparisons among the three programs in terms of extent of business community influence are difficult since the smaller size of the Johnson-O'Malley sample tends to inflate correlation coefficients for that program. For Title I and Title IV, there is no such problem, and we conclude that these two programs are equally susceptible to community influence.

In terms of influencing program success via PAC functioning, the Title I program is more successful at sites where the business community favors vocational training for Indian students, is opposed to college preparatory programs, and is somewhat opposed to any special programs for Indians. The same general pattern exists with regard to the Johnson-O'Malley program. We conclude that Title I and Johnson-O'Malley programs seem to be most successful in communities where non-preferential treatment and "learning a trade" are the educational norms. The results for Title IV are more encouraging. This program is more successful, in terms of business community influence through parent committees, in communities which are more receptive to special programs for Indian students.

In terms of influencing success through LEA management, all three programs have the unfortunate tendency to be more successful in communities where vocational training is stressed at the expense of college preparation. Again, Title IV is the only program for which success is positively related to a community appreciation of the need for special programs for Indian students. For the Johnson-O'Malley program, there is a an unusual finding: program success seems to be positively related to a general community dissatisfaction with Indian educational programs, suggesting that a successful Johnson-O'Malley program does not imply general success in preparing Indian students for adult life.

All program success factors considered thus far have been at the local level. The analysis model hypothesizes that program success is also influenced by management practices at the state and regional levels. Such influence would be indirect in that it would flow through the LEA, affecting management practices there, which in turn would have their effect on the local program. These linkages have been investigated for each of the programs. Since the same set of management dimensions has been rated at each agency level, we have simply looked at correlation coefficients for each of these dimensions (rather than using the multiple regression approach.) The correlation coefficients are shown below:

	LEA vs. SEA Title I	LEA vs. SEA Title IV	LEA vs. SEA Johnson-O'Malley	LEA vs. BIA Johnson-O'Malley
Program Design	0.10	--	-0.09	-0.36
Evaluation	0.08	--	0.22	-0.32
Dissemination	0.21	0.04	-0.40	-0.23
Program Management	-0.24	0.47	0.76	-0.18
Training	-0.01	--	-0.57	0.11
Technical Assistance	0.40	-0.07	-0.53	-0.50
Organization	0.33	--	0.07	-0.18
Legislation	0.12	0.00	--	--
Average	0.12	0.11	-0.08	-0.24

The general conclusion can be drawn from the average correlation coefficients given in the bottom line of this table that there is no relationship between good management of a program at the SEA level and good management of the same program at the LEA level. For Johnson-O'Malley, an even more negative conclusion might be drawn: good management at the LEA is associated with poor management at the BIA area office.

A related issue is that of comparing program management at the LEAs for the three different programs. Although LEA management is evaluated only in terms of specific programs, one would assume that there is some underlying good management, or poor management, at a LEA, and that this would have its effect on each of the programs. In order to test this assumption, we have correlated management dimensions for each pair of programs at the LEA level. The results are as follows:

	Title I vs. Title IV	Title I vs. Johnson-O'Malley	Title IV vs. Johnson-O'Malley
Program Design	0.24	-0.59	-0.44
Evaluation	0.53	-0.76	-0.45
Dissemination	-0.02	-0.88	0.49
Program Management	0.39	-0.42	-0.12
Training	0.50	-0.41	-0.65
Technical Assistance	0.24	-0.62	0.09
Organization	-0.10	-0.25	-0.07
Legislation	0.54	--	--
Average	0.29	-0.56	-0.16

The assumption is validated in part and invalidated in part. In most areas, particularly those of evaluation, program management, training and legislation, good Title I management and good Title IV management seem to go hand in hand. (Bear in mind, though, that good Title I management is associated with a successful Title I program, while good Title IV management is not associated with a successful Title IV program). The Johnson-O'Malley program, however, is not related to the other two in terms of sound management at the LEA. The negative relationship between Title I and Johnson-O'Malley is particularly striking, and suggests that these two programs are competing with each other at the LEA level.

Note that the previous two tables are based entirely on data from the management study, so that they do not involve any confusion between different methodologies or different investigating teams. We are faced with two related problems: first, improved management at the state level does not lead to improved management at the local level; second, there seems to be no definition of good management at the local level that is generally applicable to all three programs under consideration.

The final step in the overall analysis is that of relating program success for the three programs to general relevance of the educational program to Indian needs. As a preliminary, we note the following correlations among the program success measures themselves: between Title I and Title IV, 0.37; between Title I and Johnson-O'Malley, -0.06; and between Title IV and Johnson-O'Malley, -0.19. This serves to confirm the findings obtained from the LEA management data: between Title I and Title IV, programs tend to be both successful or both unsuccessful at a site, but to be both competing with the Johnson-O'Malley program for success.

Using multiple regression to predict general educational relevance from the three program success measures, we obtain a multiple correlation coefficient of 0.41. This correlation is not statistically significant. Its low value, in fact, suggests that even in combination the three programs leave much to be desired in terms of meeting Indian educational needs. The beta weights for this regression are 0.06 for Title I success, 0.38 for Title IV and 0.18 for Johnson-O'Malley. We conclude that, to the extent that the combination of programs is relevant at all, it is the Title IV program that produces relevance.